

THE BALKANS: ASSESSING THE PROGRESS AND LOOKING TO THE FUTURE

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THURSDAY, APRIL 10, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EUROPE,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:45 p.m. In Room 2172, Rayburn House Office Building, Hon. Doug Bereuter [Chairman of the Subcommittee] presiding.

Mr. BEREUTER. The Subcommittee will come to order.

I apologize for being a little bit late. We are having a ceremony over in Statuary Hall that involves recognition of the contributions of our armed services and those of our allies.

Today, the Europe Subcommittee will hear from General William L. Nash, U.S. Army, retired, from the Council on Foreign Relations and Project Director of the recent study *Balkans 2010*; Dr. Daniel Serwer from the U.S. Institute of Peace and Dr. Mark Wheeler from the International Crisis Group.

It is with considerable interest and resolve to meet our oversight responsibilities that the Europe Subcommittee today holds a hearing on the Balkans, a region of immense geopolitical significance and concern over the past decade. A deeper and more extended consideration of the events of the past decade in the Balkans, and of U.S., European and NATO engagement in the region, might also prove to be helpful and instructive in assessing the present U.S.-European relationship, the structure for international involvement in the Iraq aftermath, and the future roles for NATO and the European Union in the region.

For it was the United States that led the international community in peace enforcement action in Bosnia and Kosovo after our European allies proved incapable of action early in this internal Yugoslav conflict. It was NATO that began to fundamentally reorient its mission and capabilities—from collective defense to collective security and intervention—through its operations in the Balkans; and it is NATO and the European Union which have begun to operationalize their imperfect capabilities to reconstruct and develop countries and societies that have suffered through war, ethnic cleansing and a range of injustices. They are engaged in efforts to create peace and greater prosperity and hope in the Balkans.

Since 1991, when Slovenia, Croatia and the former Yugoslav Republic of Macedonia declared independence from Yugoslavia, the Balkans region emerged as the defining security challenge in Europe in the post-Cold War era. NATO military intervention eventu-

ally stopped the fighting in Bosnia in 1995 and began to reduce most of the overt violence in Kosovo in 1999 and in the former Yugoslav Republic of Macedonia in 2001. NATO's military commitment in the Balkans remains the Stabilization Force, SFOR, in Bosnia; the Kosovo Force, KFOR, in Kosovo; and until recently operation Amber Fox and Allied Harmony in Macedonia.

Today, SFOR forces number approximately 12,000 military personnel, including about 2,000 Americans. KFOR forces are calculated at roughly 25,000 troops, including about 3,000 Americans.

The NATO mission in Macedonia, with 450 personnel, has always been comprised entirely of European forces. Prior, however, to this NATO mission, a U.N. preventive peacekeeping force mission in Macedonia with two Scandinavian battalions and one reinforced U.S. Army battalion was terminated by a Chinese veto in the U.N. Security Council.

I had the pleasure of visiting our troops there several times. In fact, it was I think to some extent the Members of this Committee that went to President Clinton and suggested our preventive peacekeeping force ought to go to Macedonia and that we would stand behind him and support him if he made that decision.

On March 31 of 2003, NATO transferred the peacekeeping responsibilities in Macedonia to the European Union.

Today, a great many problems remain in the countries that were formerly part of Yugoslavia, but the Balkans region is in better shape than at any other time in the past decade I think. All of the governments of these independent nations are democratically elected. All of the economies are experiencing some economic growth. All of the societies seem committed to seeking eventual membership in Euro-Atlantic institutions and are coming to understand what is required to achieve this goal. That is the good news.

However, there remains much that is very troubling. The assassination of Prime Minister Zoran Djindjic of Serbia on March 12 of this year, almost 1 month ago, demonstrates how fragile the situation in the Balkans remain.

I might add that the U.S. House of Representatives passed a resolution yesterday expressing condolences and offering support to the people of Serbia and Montenegro.

Small groups of extremist nationalists continue to oppose western standards of democracy and rule of law and are committed to blocking progress. Economic development is slow and difficult, and foreign investment is much less than expected due to continued political instability. Law enforcement, judicial systems and border controls are weak. Organized crime and official corruption are entrenched and widely prevalent and constitute a very major impediment to economic and political progress. Trafficking in weapons, drugs and human beings continues. And all of the above problems also raise concerns about the extent to which individuals and groups linked to terrorist organizations are able to operate in the region.

The Administration has indicated that the U.S. will remain engaged in the Balkans for the foreseeable future, while asking European nations to take on ever-larger responsibilities. However, the U.S. must ultimately be realistic about what American leadership

and military force can and cannot do and what the U.S. should be expected to do.

Europeans have the most direct and obvious interests, it seems to me, in preventing further Balkan chaos and instability: An economic interest in developing markets and trade with the region and a security interest in protecting the borders of the European Union against criminal activity, terrorism and refugee flows. The EU indicates its willingness to take the lead in providing economic and technical assistance and encouraging political and economic reform in the region, with the aim of elevating standards of economic and political governance to EU norms.

While Europe should play a critical role in helping the Balkan nations institutionalize democracy in the Balkans, the U.S., I think it is fair to say, is playing a major role. Because the U.S. led the NATO intervention in Bosnia and Kosovo, America has unique standing, influence and credibility with the people of the Balkans. Perhaps the main question for the U.S. is whether the EU has the political will, credibility and coherence to see its strategy through to success—and whether it will commit the necessary resources in a timely manner. I believe it is strongly in the U.S. interest to encourage and assist the EU to stay the course.

But, at the same time, the U.S. has unique capabilities that are unmatched in Europe but still needed in the Balkans. The U.S. military is an essential deterrent I think to the reemergence of religious/ethnic violence, and the U.S. is viewed as the most neutral and trusted power by most of the people in the region.

I believe that NATO missions in the Balkans cannot be discontinued responsibly until effective, alternative public security forces have been developed. It would seem that the Alliance should continue to play a role by transitioning from force deployments to security cooperation and engagement activities, such as NATO's Partnership for Peace, in order to facilitate integration into Euro-Atlantic security structures and institutions.

The cohesiveness of the international community is perhaps the necessary element if further progress is to be made in the Balkans. Both the U.S. and the nations of Europe would like to integrate the countries of the Balkans into Europe and Euro-Atlantic institutions. Perhaps NATO's Partnership for Peace program and Membership Action Plan process for future membership in the Alliance and the EU's Stabilization and Association process for future membership in the European Union do offer the long-term strategy by which the international community can more usefully prioritize and organize its efforts and activities.

Perhaps in this way cooperation and coordination of the Balkans region will present a unique opportunity through which the U.S. and its allies and partners may work together to constructively address many of the present challenges in the trans-Atlantic relationship. And perhaps our efforts and activities in the Balkans will help us conceptualize a new collaboration between the United States and Europe.

I look forward to the testimony of our witnesses. I apologize for going on at length. I thought it was good to provide something of a setting and my own views.

But I turn now to the gentleman from Florida, the Ranking Member, Mr. Wexler, for any comments he would like to make.
[The prepared statement of Mr. Bereuter follows:]

PREPARED STATEMENT OF THE HONORABLE DOUG BEREUTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA, AND CHAIRMAN, SUBCOMMITTEE ON EUROPE

Today the Europe Subcommittee will hear from Gen. William L. Nash (U.S. Army, Ret.) from the Council on Foreign Relations, and project director of the recent study *Balkans 2010*, Dr. Daniel Serwer from the U.S. Institute of Peace, and Dr. Mark Wheeler from the International Crisis Group.

It is with considerable interest and resolve to meet our oversight responsibilities that the Europe Subcommittee today holds a hearing on the Balkans—a region of immense geopolitical significance and concern over the past decade. A deeper and more extended consideration of the events of the past decade in the Balkans, and of US, European, and NATO engagement in the region, might also prove to be helpful and instructive in assessing the present US-European relationship, the structure for international involvement in the Iraq aftermath, and the future roles for NATO and the European Union in the region. For, it was the United States that led the international community in peace enforcement action in Bosnia and Kosovo after our European allies proved incapable of action early in this internal Yugoslav conflict. It was NATO that began to fundamentally reorient its mission and capabilities (from collective defense to collective security and intervention) through its operations in the Balkans. And, it is NATO and the European Union which have begun to operationalize their still imperfect capabilities to reconstruct and develop countries and societies that have suffered through war, ethnic cleansing, and a range of injustices. They are engaged in efforts to create peace and greater prosperity and hope in the Balkans.

Since 1991, when Slovenia, Croatia and (the Former Yugoslav Republic of) Macedonia declared independence from Yugoslavia, the Balkans region emerged as *the* defining security challenge in Europe in the post-Cold War era. NATO military intervention eventually stopped the fighting in Bosnia in 1995, and began to reduce most of the overt violence in Kosovo in 1999 and in (the Former Yugoslav Republic of) Macedonia in 2001. NATO's military commitment in the Balkans remains the Stabilization Force (SFOR) in Bosnia, the Kosovo Force (KFOR) in Kosovo, and until recently Operations Amber Fox and Allied Harmony in Macedonia. Today, SFOR forces number approximately 12,000 military personnel, including about 2,000 Americans. KFOR forces are calculated at roughly 25,000 troops, including about 3,000 Americans. The NATO mission in Macedonia, with about 450 personnel, has always been comprised entirely of European forces. Prior to this NATO mission, a UN preventive peacekeeping force mission in Macedonia with two Scandinavian battalions and one re-inforced U.S. Army battalion was terminated by a Chinese veto in the UN Security Council. On March 31, 2003, NATO transferred the peacekeeping responsibility in Macedonia to the European Union.

Today, a great many problems remain in the countries that formerly were part of Yugoslavia, but the Balkans region is in better shape than at any other time in the past decade. All of the governments of these independent nations are democratically elected, all of the economies are experiencing economic growth, all of the societies seem committed to seeking eventual membership in Euro-Atlantic institutions and are coming to understand what is required to achieve this goal. That is the good news.

However, there remains much that is very troubling. The assassination of Prime Minister Zoran Djindjic of Serbia on March 12th of this year, almost one month ago, demonstrates how fragile the situation in the Balkans remains. (I might add that the U.S. House of Representatives passed a resolution yesterday expressing condolences and offering support to the people of Serbia and Montenegro.) Small groups of extreme nationalists continue to oppose western standards of democracy and rule of law and are committed to blocking progress. Economic development is slow and difficult, and foreign investment is much less than expected due to continued political instability. Law enforcement, judicial systems and border controls are weak. Organized crime and official corruption are entrenched and widely prevalent, and constitute a very major impediment to economic and political progress. Trafficking in weapons, drugs and human beings continues. And, all of the above problems also raise concerns about the extent to which individuals and groups linked to terrorist organizations are able to operate in the region.

The US Administration has indicated that the US will remain engaged in the Balkans for the foreseeable future, while asking the European nations to take on ever larger responsibilities. However, the US must ultimately be realistic about what American leadership and military forces can and cannot do—and what it should be expected to do.

Europeans have the most direct and obvious interests in preventing further Balkans chaos and instability: an economic interest in developing markets and trade with the region, and a security interest in protecting the borders of the European Union against criminal activity, terrorism and refugee flows. The EU indicates its willingness to take the lead in providing economic and technical assistance, and encouraging political and economic reform in the region, with the aim of elevating standards of economic and political governance to EU norms.

While Europe should play a critical role in helping the Balkans nations institutionalize democracy in the Balkans, the US is playing a major role. Because the US led the NATO interventions in Bosnia and Kosovo, America has unique standing, influence and credibility with the people of the Balkans. Perhaps the main question for the US is whether the EU has the political will, credibility and coherence to see its strategy through to success—and whether it will commit the necessary resources in a timely manner. I believe it is strongly in the US interest to encourage and assist the EU to stay the course. At the same time, the US has unique capabilities that are unmatched by Europe but still needed in the Balkans. The US military is an essential deterrent to the re-emergence of religious/ethnic violence, and the US is viewed as the most neutral and trusted power by most of the people in the region.

I believe that NATO missions in the Balkans cannot be discontinued responsibly until effective, alternative public security forces have been developed. It would seem that the Alliance should continue to play a role by transitioning from force deployments to security cooperation and engagement activities, such as NATO's Partnership for Peace, in order to facilitate integration into Euro-Atlantic security structures and institutions.

The cohesiveness of the international community is perhaps the necessary element if further progress is to be made in the Balkans. Both the United States and the nations of Europe would like to integrate the countries of the Balkans into Europe and Euro-Atlantic institutions. Perhaps NATO's Partnership for Peace program and Membership Action Plan process for future membership in the Alliance, and the EU's Stabilization and Association process for future membership in the European Union, offer the long-term strategy by which the international community can most usefully prioritize and organize its efforts and activities. And perhaps in this way, cooperation and coordination in the Balkans region will present a unique opportunity through which the US and its European allies and partners may work together to constructively address many of the present challenges in the trans-Atlantic relationship. (And, perhaps our efforts and activities in the Balkans will help us to conceptualize a new collaboration between the United States and Europe.)

I look forward to the testimony of our witnesses.

Mr. WEXLER. Mr. Chairman, what I would like to do, with your permission, is to defer to Mr. Engel, who, on our side of the aisle, for many years has been the leader on many issues affecting the Balkan region. With your permission, I would like him to deliver our opening statement.

Mr. BEREUTER. Certainly. Mr. Engel.

Mr. ENGEL. Well, thank you, Mr. Chairman; and I would like to thank the Ranking Member of the Subcommittee for allowing me to give the opening statement on our side.

While the Ranking Member is new to the ranking position on the Europe Subcommittee, he is already making his mark on U.S. policy toward Europe; and I look forward to working with him closely over the next 2 years.

Mr. Chairman, thank you for holding this hearing today. The Nation's attention is rightfully focused on Iraq, and we are all grateful that the conflict is moving toward the next phase. But yet if so much attention is focused on the Middle East we must not lose sight of our important interests in Europe. Indeed, we have made substantial national investments to insure that the Balkans never

again burst into the kind of warfare that occurred during the last decade; and again, I think for the most part we have been successful.

The Dayton Accords, while not a perfect resolution, ended the war in Bosnia. The air campaign against Slobodan Milosevic ended Belgrade's harsh policies against Kosova, and it led also to the Milosevic downfall and his trial in The Hague.

Furthermore, the region is moving toward democracy. There are elected leaders in every country in the former Yugoslavia. Regional cooperation has expanded to promote trade, a coordinated security policy and against crime and trafficking. Yet, we still face many challenges in the region.

The murder of Zoran Djindjic, the former prime minister of Serbia, scratched the surface off what seemed to be a reforming Serbian society and showed that the criminal elements on which the Milosevic regime so heavily depended have not gone away. While I am glad that there is now a crackdown I am saddened that this took an assassination to begin.

In Bosnia, IFOR originally entered Bosnia with 60,000 troops. We are well below that now. Indeed, the U.S. has only 1,800 troops left there. Given the brutality of the Bosnia war, the international community has been successful in quelling the inter-ethnic violence, but in many ways the peoples remain separate. Bosnians, Croats and Serbs especially still live in completely separate regions, and the presence of the SFOR mission remains important.

In Kosova, we are still awaiting movement toward final status. As Members of this Subcommittee and our witnesses know, I strongly support the independence of Kosova.

When I look at the situation, I can see only three possible outcomes: One, Kosova becomes part of Serbia, Yugoslavia, perhaps as a third republic; two, the international protectorate continues forever; or, three, Kosova becomes independent. The Kosova Albanians, the overwhelming majority of Kosovars, will never accept the first, going back to Serbia; and the second is untenable because the international community cannot stay there forever. This leaves only independence as the viable option.

I must offer the following caution to the international community on Kosova. It is important not to delay the final status discussions too long, too many Kosovars are out of work, see Belgrade and the Europeans as holding back their legitimate quest for self-determination and are not seeing any hope. If there is no hope, the wrong elements gain the upper hand. It is important to move forward on final status discussions.

Yet I must also caution my Albanian friends in Kosova. There should not be any acts of retribution against Serbs; and Albanians must not be perceived, fairly or unfairly, as repressing Kosovar Serbs, just as the Serbs and Milosevic repressed Albanians. The Serbs that left should be invited back, and all legal protections should be conferred upon them as due members of the national minority.

They need to move on to passing the key laws so that Kosova will already be a functional nation-state. All that would be needed would be international recognition. Independence cannot be achieved without international recognition, and so the people of

Kosova have to keep their eyes on the prize—the long-range goal of independence.

I would also like to call the attention of the Subcommittee to the progress and challenges in Macedonia. Today, the war has ended; and the Ohrid Agreement is in an implementation phase. While in some instances the Ohrid Agreement is working; in other ways, there are holdups. While joint Macedonian and Albanian police units are beginning to patrol in many areas, other key laws have not been passed.

I hope the witnesses will address the developments in Macedonia.

Finally, I would like to touch on Albania. It took approximately a decade following the end of the Hoxha Regime, but it gives me great pleasure to report that the beginning of normalization of politics in Albania is working. Opposing parties are beginning to work together in Parliament and, different from the late 1990s elections, have proceeded without major hitches. Of course, there is still a long way to go.

Albania remains the poorest nation in Europe; and, although there has been improvement in the economy, corruption and trafficking still are too widespread. I would like to see democratic institutions take hold in Albania in Kosova and in the rest of the Balkan region. It is not the people or the parties that we are concerned with. It is having the institutions take hold.

I know that all three of the witnesses today will mention in detail some common things—the need for progress in the rule of law; expansion of the EU's roles in bringing these nations into Europe as stable, market-based democracies; and fighting corruption and trafficking. I agree that these are key goals and look forward to your testimony today.

I thank you, Mr. Chairman.

Mr. BEREUTER. Thank you very much, Mr. Engel.

We have two votes. I would like to introduce the witnesses before we proceed to the votes, and then we will be able to resume immediately upon return.

First, Dr. Daniel Serwer is the Director of the U.S. Institute of Peace Balkans initiative. He has worked extensively on democratization in Serbia and has been deeply engaged in facilitating dialogue between Kosovo Serbs and Albanians. Before working for the U.S. Institute of Peace, he served in a number of years in the U.S. Department of State from 1994 through 1996. He served as U.S. Special Envoy and Coordinator for the Bosnian Federation, mediating between Croats and Bosnians and negotiating the first agreement reached at the Dayton peace talks.

Dr. Mark Wheeler, who flew in from Sarajevo, is the Bosnia Project Director of the International Crisis Group in Sarajevo. Previously, he has had a long distinguished academic career specializing in the Balkans and serving in various academic institutions in the United Kingdom. He has also been extensively involved in numerous government and nongovernmental organizations associated with the Balkans region over the past decade.

General William L. Nash is the Director of the Center for Preventive Action at the Council on Foreign Relations. He is one of the few Americans to have led both civilian and military peacekeeping

operations in the Balkans. In 2000, at the request of the U.S. Government, he became the Regional Administrator for the United Nations in Northern Kosovo.

General Nash's previous military experience includes Assistant Division Commander, 3rd Infantry Division, Germany; commander of an armored brigade in Operation Desert Storm. He served as Commander of Task Force Eagle, a multinational division with more than 25,000 troops from 12 nations charged with implementing the Dayton Peace Accords in northeastern Bosnia-Herzegovina. He also presently serves as an adjunct professor at Georgetown University.

Gentlemen, we will ask for and appreciate your patience as we go cast two votes. I would say we will be back in approximately 18 minutes. So be at ease.

The Subcommittee stands in recess.

[Recess.]

Mr. BEREUTER. The Subcommittee will come to order.

Maybe there is a Democratic Caucus I don't know about, but I think they will be here shortly.

Gentlemen, we are looking forward to your statements. Your entire written statements will be made a part of the record. I want to hear from you. We want to hear from you, so we are going to set the clock at 10 minutes for each of you, rather than what you sometimes get around here.

Dr. Serwer, you may summarize or proceed as you wish.

STATEMENT OF DANIEL SERWER, DIRECTOR, BALKANS INITIATIVE, U.S. INSTITUTE OF PEACE

Mr. SERWER. Thank you Mr. Chairman. I will summarize my written statement, which is available for the record.

Mr. Chairman, I think there are two important transitions occurring in the Balkans today. One is from war to peace or, more precisely, from war, nationalism and dictatorship to peace, democracy and a European future. The other transition is from American to European leadership.

As you suggested in your opening statement, both are going reasonably well, but there are some key issues that require U.S. engagement. I want to focus just on those. I am not trying to convince you that the U.S. has to remain engaged on everything, but we do have a \$24 billion investment in the Balkans that we need to protect.

In the transition from war to peace, U.S. attention, in my view, should focus on just three things. First is reform of the security services in Serbia, second is a decision on the final status of Kosovo, and third is capture of war criminals indicted by The Hague Tribunal.

Let me talk about Serbia first. It is clear after the tragic assassination of Zoran Djindjic that it was a mistake to leave in place after Milosevic was overthrown in October 2000, the police, military security services and judiciary that served Milosevic so well. I think there is an important lesson here for Iraq. We cannot and should not leave an old regime in place, but we also can and should impose law and order.

The new government that succeeded Zoran Djindjic has surprised most observers and maybe itself as well by finding the right path, by doing the right things; and I think we ought to be supporting them, as suggested by the Secretary of State's recent visit. We also have to be careful that this vigorous crackdown, while completely justified and well-motivated, is not abused for political purposes and is not even seen as being abused for political purposes.

I also think the United States should be prepared to expand the \$110 million in assistance that it provides to Serbia, focusing specifically on reforming the security services and establishing the rule of law.

The second problem meriting U.S. attention is the final status of Kosovo. This issue cannot, in my view, be put off forever. The critical pre-condition for opening negotiations is improved treatment of Serbs and other minorities within Kosovo. But there is a real need, both among the Serbs and among the Albanians, to begin a process of decision by 2004. Otherwise, there are serious risks of instability, there are serious risk of harming reform forces in Serbia, and there are serious risks of retarding the progress of both Kosovo and Serbia toward Europe.

I believe it is possible to find a negotiated solution. Some time ago, about a year and a half ago, the United States Institute of Peace started some quiet contacts between young Serbs and young Albanians from Belgrade and Pristina, many of whom have very responsible positions, at a time when everybody said it couldn't be done. It can be done. We have expanded those contacts considerably. We have quite a few people talking to each other; and it is clear to me that the time is coming when, even at the higher political levels, they will be able to talk to each other.

The third issue on which we need to remain engaged is capture of indicted war criminals. This is critical to establishing the rule of law throughout the Balkans, and U.S. troops will not be able to leave Bosnia until it is done. Rule of law is critical to our own permanent interests in blocking terror, drugs and the illicit arms trade in the Balkans.

Let me comment on the issue you raised concerning a haven for terror in the Balkans. There are some risks in that direction. But if there are two nominally Muslim populations that are favorable to the United States and opposed to terrorism, it is the Bosnian-Muslim population and the Albanian-Muslim population.

Muslim terror has not proven to be an enormous problem. It has proved to be a sporadic problem in the Balkans. In fact, the biggest problem I think we have had on the security side in the Balkans is the sale by Bosnian Serb and Serbian companies of arms to Iraq. We should keep a close eye on that issue.

Let me offer an idea of some things that we do not need to lead on in the Balkans. I don't believe we should lead on economic reform and development. They are better handled by the IMF, World Bank and EU, which have vastly greater resources at their disposal. Social welfare is an enormous problem in the Balkans, but it should fall to others to handle it. State building should mostly be a EU responsibility, in my view, because these countries are going to be European states. And military reform should be han-

dled primarily by NATO. We should play a complementary role with our bilateral assistance.

Let me turn to the second big transition occurring in the Balkans: The transition from American to European leadership. The fact is that European-American cooperation of Balkans is today, very good. We cannot expect that good cooperation to be the tail that wags the dog and creates good cooperation in Iraq. But I do think it teaches us a lesson.

When I first got engaged in the Balkans in the early 1990s, European-American relations were really bad in the Balkans. The United States had proposed lifting the arms embargo. The Europeans didn't want to.

We have worked at improving cooperation for a long time. The Americans took some strong leadership positions. We got the Europeans to come along with us, and I think that something like that needs to happen in Iraq as well.

Europe is better equipped today than it was 10 years ago when it failed to deal with the Balkans, but it still lacks credibility. Europe needs to make its vision of the future more credible by treating the Balkans states as potential members. They are planning a decline in their assistance to the Balkans. They are planning to half it from 2000 to 2006. That has to stop, and they have to start treating the Balkans like a backwards region of the EU, not like some remote territory.

Europe also needs common purpose and unity of command and control, especially in Macedonia. Things are going pretty well in Macedonia, as Mr. Engel mentioned; and I think that the credit is largely due to the Albanian and Macedonian leadership in government there right now. They are doing a fine job, and the Europeans are doing a fine job. The EU should be looking forward to taking over in Bosnia eventually, but only once the war criminals are in The Hague and the issue of divided armed forces in Bosnia has been overcome.

Let me, before I conclude, address two current policy issues: What should we do about the conditions for bilateral U.S. assistance to Serbia, and what should we do about Kosovo final status?

On the question of the conditions for bilateral assistance to Serbia, my suggestion to you is to leave them alone. Any change will be seen as moving the goalpost. They are still applicable even if some have been partly fulfilled, and they are needed to encourage reformers. If you tighten the conditions, it will undermine the reformers, who will be criticized for cooperating with people who always change what they want. If you loosen them, as the Council of Europe recently did, you will undermine the reformers because they won't have a clear target to aim for.

I think the conditions ought to be kept where they are, but I also think we should seek better coordination with the Europeans, who give much more assistance to Serbia and who have an enormous amount of influence if they want to exercise it.

On Kosovo final status, I believe the United States needs to begin the process of preparing for final status negotiations. We have to decide on what forum we are prepared to have this discussion in, and we have to decide on the range of possible outcomes we are willing to accept.

I don't agree with Mr. Engel about there being only three options. I believe there are a lot more options. I believe the likely outcome will be a complicated one and not necessarily a simple one. We are going to need a strong U.S. mediator, probably coupled with a EU negotiator. But, most of all, we need to begin the process of thinking about it and stop telling everybody that this needs to be put off forever.

Finally, the U.S., in approaching the issue of Kosovo final status, has to make it absolutely clear to everybody involved that whatever is decided will not be allowed to destabilize Bosnia or Macedonia. There will be no compensation for losses in these negotiations with the territory of other sovereign states.

Mr. Chairman, we are closer to peace than to war, closer to European than American leadership. I believe the right way out of the Balkans is to finish the job: To finish security sector reform in Serbia, which is progressing much better under this new government; to finish the process of decisionmaking on Kosovo final status within the next few years; to get all of the indicted war criminals transferred to The Hague. Once we have done those three things, we should complete a smooth hand-off to Europe.

Thank you, Mr. Chairman.

Mr. BEREUTER. Dr. Serwer, thank you very much for your statement.

[The prepared statement of Mr. Serwer follows:]

PREPARED STATEMENT OF DANIEL SERWER,¹ DIRECTOR, BALKANS INITIATIVE, U.S. INSTITUTE OF PEACE

Mr. Chairman, let me first express to you my appreciation for holding this hearing on the Balkans, even while Washington's attention is focused elsewhere. The United States Government has invested upwards of \$24 billion in Balkans peace over the past decade, a substantial amount even if it will be dwarfed by spending in Iraq. We need to protect our investment and ensure that it pays dividends to the American taxpayer.

There are two important transformations occurring in the Balkans today. The first is a transition away from nationalism, dictatorship and war towards peace, democracy, and a European future. The second is a shift of responsibility from the US, which led the Bosnia and Kosovo interventions as well as the fight against Milosevic, to the European Union, which shared leadership with the US in bringing peace to Macedonia and ultimately must lead the process of European integration for all of the Balkans. The objective of US policy should be to ensure the success of both these processes.

FROM WAR TO PEACE

Let me talk first about the transition within the Balkans. We have seen marked progress in the last several years, especially in Croatia, Romania, Bulgaria and Albania.

These countries are leading the region towards NATO and the EU by concerted efforts to meet the membership requirements. I might fault each for shortcomings, but their leaderships are trying to match actions to ideals.

I will not catalogue current problems in the Balkans, which lie principally in Serbia, Kosovo, Macedonia and Bosnia. I want instead to focus on those that require continuing US engagement. Solve these few, and we can turn over leadership to the Europeans without endangering our investment.

First among the problems requiring US attention is reform of the security sector in Serbia. It is all too clear in the aftermath of Prime Minister Zoran Djindjic's tragic assassination that it was a mistake to leave in place the network of criminals, security forces, businessmen and politicians that had been the backbone of the Milosevic regime. I do not agree with those who say the US pressed the Serbs too

¹The views expressed here are those of the author, not the US Institute of Peace, which does not take positions on policy issues.

hard, or that Zoran would be alive today if we had ignored the issue of war criminals. The crackdown that the Serbian government is now pursuing, using extraordinary emergency powers, should have occurred immediately after the overthrow of Milosevic in October 2000. Even as it looks forward to a Serbia that meets the highest human rights standards, and warns Belgrade to avoid using emergency powers as a political tool, the US can and should support a limited crackdown as well as the essential follow-on measures: deep reform of the police, army and security services. We should be prepared to expand significantly the \$110 million or so in assistance that we provide to Serbia, focusing the additional effort specifically on reform of the security services and the rule of law.

The second problem requiring US attention is the final status of Kosovo. By the end of this year, the head of the UN Mission in Kosovo, Michael Steiner, will have turned over all but a few powers to the Provisional Institutions of Self-Governance, in accordance with the provisions of Security Council Resolution 1244. He will also have succeeded, I believe, in opening a dialogue between Belgrade and Pristina on non-status issues of importance to both Serbs and Albanians. Before his death, Zoran Djindjic had called for immediate talks on final status, in order to avoid damaging the prospects for Serbia's reform factions at the polls as well as Serbia's prospects for a closer relationship with the EU. The Kosovar Albanians, for their part, want independence and will not sit still forever in an international protectorate.

The US Government, in concert with European governments, has so far tried to postpone consideration of final status indefinitely. The Administration rightly claims that Kosovo has not yet met all the standards the UN has set as preconditions. At this point the crucial standard is treatment of Serbs and other minorities. The US should use all the influence deriving from its special relationship with the Kosovar Albanians to convince them that they must allow Serbs and other minorities to return to their homes securely, worship in their churches without risk, and travel throughout Kosovo without harassment or threat. If this happens, final status talks should begin.

It will be difficult to postpone the opening of talks beyond 2004 in any event. The US needs to ready itself for a decision on Kosovo final status. Continuing refusal to face this issue will put the US behind the curve, creating serious risks of unrest and instability. Europe cannot be expected to proceed on Kosovo final status without the US.

The third main issue on which the US needs to focus is establishment of the rule of law throughout the Balkans. This requires transfer of those indicted for war crimes to The Hague. Paddy Ashdown, the international community's senior agent in Bosnia, has made justice his first priority, but unless Karadzic and Mladic are captured no one will believe it. Nor will it be possible to withdraw US troops.

Rule of law goes far beyond the question of war criminals and touches vital US interests, such as ensuring there is no Balkans haven or transit point for international terrorists. A significant percentage of the drugs and arms reaching Europe pass through the Balkans and enrich its mafias, and until recently Serbian and Bosnian Serb companies were supplying Iraq with weapons. Terror, drugs and arms will be permanent US interests in the Balkans, and it behooves us to invest in building up the institutions required to meet our own security objectives.

Let me make clear what I think we could do less in the Balkans. I do not believe the US should engage heavily on economic reform and development—the resources available to the US Government in this area are minimal, and the IMF, World Bank and the EU are vastly better equipped and funded. Likewise, social welfare concerns—while all too real and important—should fall to others. Most of the state-building function, while vital because the Balkan wars were due in large part to weak states, should fall to the EU, which will want to shape Balkan states in a European mold. Last but not least, we should look to NATO for leadership on military reform, and play a role when needed through NATO or in bilateral activities that complement NATO's efforts.

FROM US TO EUROPEAN LEADERSHIP

Let me turn to the transfer of leadership to the Europeans, who failed in the Balkans a decade ago but now have another opportunity. Today's Europe is better prepared. It has fielded an excellent team: in addition to Ashdown in Bosnia and the Steiner in Kosovo, Javier Solana, Chris Patten and Erhard Busek in Brussels. Europe has footed most of the bill for the Balkans, and provides most of the troops—now about 75%, vs. 15% for the US. European Foreign and Security Policy, while a shambles on Iraq, persists in the Balkans, as does successful European/American cooperation.

The problem Europe faces is not in my view its admittedly limited military capacity, or even its reluctance to use it. There is no military challenge in the Balkans today that the Europeans cannot handle. The real problem is credibility. Especially the Albanians, but also the Serbs and Bosnians, show little respect for the Europeans, even though they pay the bills and even though the ultimate goal for all the peoples of the Balkans is integration within Europe.

In order to make the vision of a future within Europe more credible, the European Union needs to stop treating the Balkans as a distant region that needs to be stabilized and begin to view it as a neighboring area into which the EU intends to expand. This shift has already occurred for Romania and Bulgaria, but not yet for the Western Balkans. Current EU plans call for a steady decline in assistance to the Western Balkans through 2006, to half the level provided in 2000. As pointed out by the European Stability Initiative, the EU has an opportunity at its Thessaloniki Summit in June to reverse this decline and begin to provide the Western Balkans with the kind of structural assistance that has worked so well to accelerate economic development in other laggard areas of Europe. This shift would greatly enhance the credibility of the EU and spur the countries of the Western Balkans to serious reform efforts.

But the issue of credibility is not only one of resources and vision. Europe lacks common purpose and unity of command and control. It is easy to play the Europeans off against each other. To the extent they can agree among themselves, the positions they take are often the lowest common denominator. Rarely are they able to deploy all the levers of their considerable power to achieve a clear result, as Solana did—perhaps unwisely—when he forced Montenegro to stay in a confederation with Serbia. More often, they find it difficult to coordinate their economic, political, diplomatic and military instruments so as to achieve a clearly defined objective. Seldom do they even try.

The next test for the Europeans is Macedonia, where they have taken over the military task from NATO. The prospects are reasonably good, mainly because the Macedonian and Albanian participants in the new government seem determined to fulfill their commitment to the peace process and at the same time to confront the crime and corruption that are the greatest threat to the country's viability. Europe needs to focus on making Macedonia a success. Once that has been achieved they can and should take over the military mission in Bosnia, assuming the war criminals are in The Hague and NATO has the vexing problem of unifying the Bosnian armed forces on its way to resolution.

CONCLUSIONS

Before concluding, I would like to address two important policy questions:

- What should the US do about the conditions for its assistance to Serbia in the wake of Zoran Djindjic's assassination?
- What should the US do about the final status of Kosovo?

My Serb friends are looking to the US for help and support in the aftermath of the assassination. We should certainly give them all the assistance we can, not only in tracking down the murderers, but also in cracking down on the underworld whose dirty work they did. The new prime minister has made clear that he intends to pursue the reform direction mapped out by Djindjic. In fact, the Serbian government is seizing the opportunity to accelerate reform of the police, military and judiciary. The logical outcome is arrest and transfer to The Hague of indicted war criminals. The only question is how quickly this can be achieved. We should not, as the Council of Europe has done, drop the conditions or water them down. At most the Administration should consider whether the new Serbian government has had sufficient opportunity by the June 15 deadline to do what it knows it must do. The Administration should use the time between now and then to achieve a greater degree of coordination with the Europeans, who provide more benefits to Serbia and have substantial influence if they choose to use it.

My Albanian friends are looking for the US to support Kosovo independence. It has to decide whether it will do so, if not which other solution it will support, and how any proposed solution will be sold to both Serbs and Albanians. While it is clear enough that the Security Council will have to bless a decision on final status, the US has to decide in what forum it wants the issue to be negotiated and who will lead the effort. A strong US mediator, possibly teamed with an EU counterpart, is crucial. The US also has to make it clear to all concerned that a decision on Kosovo final status will not be allowed to affect the sovereignty and territorial integrity of Bosnia and Macedonia, where much of our decade-long investment in the Balkans

lies. And it has to insist on protection of Serbs and other minorities, as a precondition to a decision on final status.

We are today more than midway in the two transitions occurring in the Balkans: closer to peace than war, and closer to European than to US leadership. The right way out of the Balkans is to finish the job, withdrawing US troops only after the essential remaining tasks have been accomplished: security sector reform in Serbia, a decision on Kosovo final status, and transfer to The Hague of the indicted war criminals.

Mr. BEREUTER. We will now hear from Dr. Mark Wheeler, Project Director of the International Crisis Group Bosnia Project. Dr. Wheeler, you may proceed as you wish.

**STATEMENT OF MARK WHEELER, BOSNIA PROJECT
MANAGER, INTERNATIONAL CRISIS GROUP**

Mr. WHEELER. Thank you, Mr. Chairman. I prepared what I regarded as an amazingly brief statement for this Subcommittee, but of course it is far too long even to begin to present in the short time that we have available, even though I understand that you have been especially generous to us. So, as a consequence, I am going to provide a short summary of what was already a short paper.

Now I am obviously going to address Bosnia and Herzegovina in particular. Despite their highly inauspicious beginnings, both peace implementation and state building in Bosnia-Herzegovina have belatedly begun to show good results. The international community has outlasted the hardliners, the firebrands, the mass murderers who regarded the Dayton peace as no more than a ceasefire. It has benefitted from positive developments in the neighborhood, above all, the demise of the Tadjman and Milosevic regimes. It has gradually learned on the job, equipping itself with the necessary tools and displaying more coherence in both setting and pursuing priorities.

Finally, the international community has developed a plausible exit strategy, the handing over of the ad hoc arrangements established at Dayton to the institutional and self-sustaining processes of European integration. Along the way, renewed war has become virtually unthinkable; and the Bosnian state framework has acquired both the presumption of permanence and at least conditional legitimacy for the majority of the country's citizens. Hundreds of thousands of refugees and displaced persons have returned to their pre-war homes, even in areas where their own kind no longer rule the roost. Aside from peace itself, Dayton's greatest gift was in providing for the absolute right of return.

Dayton also provided, however, for institutions such as a central bank, a constitutional court and the office of the high representative. These have contributed respectively to creating a common economic space, to redefining the nationally exclusive and sovereign pretensions of the entities, and to setting the reform agenda in virtually every sphere.

Although the enduring effects of ethnic cleansing remain predominant in Bosnia-Herzegovina, they are at least under sustained and occasionally successful attack on the ground, in the constitutional and fiscal structures of the government, and also in terms of political discourse.

None of this would have happened, however, if the international community had not divested itself of its illusions or the competing

political imperatives that had constrained its engagement at the outset. The mission in Bosnia-Herzegovina did not so much creep as jolt ahead, whether in the equipping of the high representative with the pro-consular powers he acquired at the end of 1997 or in accommodating SFOR's gradual assumption of the sorts of policing tasks it had originally, at American insistence, refused to take on board.

The paradox at the heart of the current situation we have in Bosnia-Herzegovina is that the international community has had to get in ever more deeply, just as it realizes that time for getting out is fast approaching. The long-term effort to square this neocolonial circle by encouraging the emergence and victory at the polls of moderate nonnationalist political forces through whom the international community might work has recently taken a serious knock.

The return of the big three nationalist parties to power following last October's elections has exposed the naked reality of the conundrum confronting the international community. The high representative is increasingly compelled to intervene, to sack office-holders and to impose legislation in order to create the circumstances in which he will no longer have to do these things. In other words, to put himself out of a job.

The fundamental reforms of the administrative order, the legal environment, the military and the economy that are necessary, whether for an exit from Bosnia by the international community or, more appropriately, an entry for Bosnia into the European Union, all these things would be very much easier to accomplish if the country were not now confronted in the economic sphere by a vicious circle of declining aid flows, rising debts and deficits, widespread poverty, pervasive corruption, stalled privatization, exiguous foreign investment and exclusively national or nationalist definitions of virtually all interests and all problems.

What is worse, the political fragmentation bequeathed by Dayton and the private systems of coping that have insulated both Bosnia-Herzegovina and the international community from social disorder and mass protests are the same barriers that stand in the way of replacing this vicious cycle with the virtuous cycle of reform and escalating hope that is necessary to turn matters around.

More than 7 years after the fighting stopped, Bosnia GDP remains less than half what it was in 1991. Public spending consumes 56 percent of this paltry GDP. While the remedies may be clear enough, rule of law direct foreign investment, export-led growth, rationalization and professionalization of government structures, but they are formidably hard to achieve, most especially because they challenge a status quo that may be dysfunctional and may indeed be intolerable in the long term but which works in the short term to the very great satisfaction of too many wielders of power and influence who benefit from it.

The big international community project at the moment, the introduction of VAT on the state level and unifying the entity's customs services, illustrates the intersection of ever deeper international engagement in ever more technical issues with the continuing intractability of Bosnian realities. In theory, the reform of indirect taxation in order both to shift the balance of power in

favor of the state and to capture hundreds of millions of dollars lost to tax and customs evasion should be an ideal battleground on which to fight.

The technical issues involved do not readily arouse the fierce popular resistance of national groups prone to claim that every innovation of any kind is a threat to their very national existence. On the other hand, neither do these reforms set the pulses racing, especially the pulses of those Bosnians who desire a more competent state capable actually of integrating into Europe. Such people, as Dr. Serwer said, would regard the capture of Radovan Karadzic, the immediate unification of the three national armies and, in fact, the abolition of the entities would be vastly more worthwhile projects for the international community to be undertaking.

But here, again, we come back to the limitations of our Dayton framework. Some things are simply beyond the international community to even think about doing.

In any case, reforms which are good in themselves and necessary for Bosnia-Herzegovina to progress toward a stabilization in association agreement with EU are not necessarily those that will have a tremendously ameliorating effect on the increasingly sour and critical atmosphere that has prevailed since the elections among those who ought to be the international community's natural allies in Bosnia. What some historians have called the iron law of colonial ingratitude is beginning to show itself, and that is that Bosnians are becoming heartily tired of the presence of the international community and blame it for all the country's failures; and, of course, the internationals blame the Bosnians for all their failures and show increasing impatience with their own capacity.

This highlights another problem or set of problems in Bosnia. For a variety of reasons where, relating both to the country's Cold War distinctiveness, Yugoslavia's Cold War distinctiveness, and to Bosnian's own especially favorable attitudes toward the old Yugoslav socialist experience, the international community has tended to exaggerate the eagerness with which Bosnians are going to be prepared to embrace either a post-Communist transition agenda or be ardently eager for European integration. This has been presumed, rather than proved.

The citizens of Bosnia and Herzegovina have a rather more favorable memory of Tito's Yugoslavia than many other people in the former Yugoslavia do; and, quite honestly, they take their place in Europe rather more for granted than those countries that used to be behind the old Iron Curtain.

Well, these are some of the psychological obstacles to actually turning an exit strategy into an entry strategy.

But it has to be said now that the most encouraging factor is that the international community is nowadays uncharacteristically united in promoting the reforms required for Bosnia to get into the EU and for itself to get out and that the EU, for its part, has proved remarkably ready to hold out and testify through such things as the European Union police mission, the "double-hatting" of Paddy Ashdown as a European special representative and, of course, the proposal that the EU should take over from SFOR the military force in 2004.

All of these things, in a sense, are more than enough reason for quite a bit of optimism. But there is, of course, no guarantee of success if the rather haphazardly developing experiment that has characterized the past 7 or 8 years in Bosnia-Herzegovina is going to succeed.

Let me just end by suggesting that there are some really rather important things that matter about what is going on in Bosnia today. For one thing, we are still looking to achieve a better, a fairer and a more sustainable peace than the one that was cobbled together in 1995. The international community, in other words, is still in a position to seek to do better now than it did during the early 1990s or at the end of the war.

As I emphasized throughout, however, Bosnia-Herzegovina might—however fragile it might still be, it is far from being a hopeless case. But it is important for us as well that this shouldn't ever be regarded as a hopeless case. Because it is terribly important in the contemporary world that a multinational state such as Bosnia and Herzegovina is should be seen to have a chance of success.

Because all of the countries in which most of us live are increasingly multinational states; and in a sense, just as Bosnia-Herzegovina is a multinational essence of the old Yugoslavia, so in a sense it is a mirror for the sort of world which is increasingly becoming predominant. If it can't succeed, then a lot of the rest of us are going to have great trouble in the future.

Thank you, Mr. Chairman.

Mr. BEREUTER. Thank you, Dr. Wheeler. I think it is a little harder for Americans to accept the fact that a multinational, multi-ethnic state should not be able to succeed. It may be a bit harder for us to grasp and to accept that than some other country.

[The prepared statement of Mr. Wheeler follows:]

PREPARED STATEMENT OF MARK WHEELER, BOSNIA PROJECT MANAGER,
INTERNATIONAL CRISIS GROUP

BOSNIA & HERCEGOVINA

The citizens of Bosnia & Herzegovina (BiH) continue to labour under a heavy burden—and the international community continues to foot a substantial bill—for an avoidable war and an inadequate peace. Having failed to stop the war, either before it began or during the three-and-a-half years that followed, the eventual peace-makers at Dayton were stuck both with the results on the ground and with the admission of Slobodan Milosevic and Franjo Tudjman into their company. That meant on the one hand, accepting the effective partition of BiH while, on the other, seeking to establish mechanisms that might one day make it whole.

Besides providing some common institutions for the otherwise vestigial state, the Dayton Peace Accords gave two million refugees and displaced persons the right to return to their pre-war homes, created a so-called High Representative to co-ordinate civilian peace implementation, and authorised the deployment of what turned out to be a 60,000-strong, NATO-led Implementation Force (IFOR). This was certainly not—to borrow Michael Ignatieff's felicitous description of the American approach to post-Taliban Afghanistan—"nation-building lite", but neither was it originally intended to be "nation-building long".

The fact that the international community is still deeply engaged in BiH seven years after Dayton is probably its single greatest achievement. International engagement has outlasted the firebrands who saw Dayton merely as a temporary ceasefire. It has survived the regimes of Tudjman and Milosevic and their capacity to foment separatism and war. It has even endured long enough to civilise political discourse. This staying power and these changes have permitted progressive troop reductions, the downsizing of international agencies and NGOs, and the completion of most physical reconstruction. Yet in other less obvious ways the international community has become even more engaged as the years have passed.

Clearly, putting a war-torn, multinational and post-communist country back together again is more complicated and time consuming than had been imagined—or deemed politically admissible—at Dayton. It also reflects, however, the equally belated endowment of the High Representative with powers to sack whom he will, to impose such laws as he sees fit and, recently, actually to do some co-ordinating among the international organisations, financial institutions and big powers that have heretofore tended to pursue their own policy agendas. Post-Dayton Bosnia did not, therefore, start out as an international protectorate, but has gradually become one.

Finally—and paradoxically—the increasingly intrusive activism of the international community reflects the likelihood that the end is nigh for the *ad hoc* arrangements mandated by Dayton. Time, patience, money, and interest are all running out. Paddy Ashdown would like to be the last High Representative. The Peace Implementation Council would like to declare Dayton implemented in 2005. Neither is likely, but the rush is nonetheless on to make BiH ready for a new sort of tutelage: the self-sustaining, self-disciplining and doubtless even longer-lasting process of European integration. This is why foreign functionaries and cock-eyed optimists alike nowadays repeat the mantra that the international community is pursuing not an exit strategy *from* Bosnia, but an entry strategy *for* Bosnia into the European Union.

Before examining the reality or otherwise of BiH's European future and highlighting the obstacles that stand in the way, it is worth looking briefly at what—besides international community endurance—has gone right since the war.

The country is peaceable and there is neither any appetite for nor any advantage to be gained from renewed warfare. Although there is still no consensus as to how it should be organised—and, particularly, whether the central institutions should stay weak and the two entities remain strong—the reality and legitimacy of the shared state have been much enhanced. Whether through unified sporting leagues, an increasingly common market and media space, a State Border Service, state-issued ID cards, or an occasionally functional tripartite presidency, centripetal forces have gained on centrifugal ones.

Significant numbers of Serbs (perhaps 40 per cent) continue to pine for unification with Serbia in a shadowy future; but their politicians have come to accept BiH as the framework in which they must operate. Croats and their leaders no longer aspire to detach Hercegovina or to create a third entity. Instead, they see the development of the state as their best defence. Bosniaks, of course, have no place else to go, and remain the principal advocates of a more competent and coherent state. But the wartime flirtation of Alija Izetbegovic's Party for Democratic Action (SDA) with a specifically Islamic course has faded. The party's new president has told Bosniaks that drinking beer is no bar to joining the SDA.

The large-scale return of refugees and displaced persons to their pre-war homes—and especially the phenomenon of "minority return" over the past three years—is the most important measure both of the progress made and of Dayton's integrative potential. Nearly a million people have gone home, some 40 per cent of them as "minorities" to towns and villages from which they were forcibly "cleansed" and in which their own ethnic group no longer rules. Many more might still return if jobs were available, if funds for reconstructing their houses could be assured, and if remaining bottlenecks could be removed, both inside Bosnia and in the region. The country will never regain its variegated pre-war demography, but the national-territorial homogenisation for which the war was fought is being mitigated. Most encouragingly, the entities' political establishments no longer even dispute the right to return.

Last year's amendments to the entity constitutions are reinforcing this trend away from national-territorial exclusivity. Mostly agreed by the main parties and adopted by the entity parliaments—but in the end requiring partial imposition by the High Representative—these amendments resulted from a decision in 2000 by the state Constitutional Court. Ruling that the Dayton constitution guaranteed the full equality of Bosnia's three "constituent peoples" throughout the country, the court struck down the provisions of the entity constitutions empowering Serbs as the "people of state" in Republika Srpska and granting Bosniaks and Croats dominion in the Federation.

The elaborate mechanisms that have since been put in place for sharing power in the executive, for defining and defending "vital national interests" in the legislatures and courts, and for setting national quotas in the public service (according to the last pre-war census) are proving difficult to implement. They are also still matters more of form than of substance. But like the return of refugees (which they will further encourage), they testify to the fact that Dayton can serve to improve upon Dayton. In other words, institutions created by Dayton—the Constitutional Court

and the High Representative—have managed to begin changing the nature of the all-powerful entities that emerged from Dayton.

However, the post-war battle to improve upon the peace and, in fact, to provide an alternative ending to the war is far from won. The obstacles remain formidable and mutually reinforcing. Some are inherent. Like the old Yugoslavia of which it was the epitome, the multinational character of BiH complicates everything. Other problems are structural. The proliferation of layers of government with law-making powers (there are fourteen) is dysfunctional and unaffordable. The socialist smoke-stack economy is dead, but remains the model after which most people hanker. Most of what is consumed is imported. And the black and grey economies that wax on this trade crowd out domestic producers and law-abiding firms, impoverish the exchequer, and compromise the rule of law. Meanwhile, the foreign debt mounts and foreign aid declines.

The long presence and increasingly exercised powers of the pro-consular regime have also become as much a part of the problem as they are essential to its solution. The High Representative and his helpmates initiate, promote and supervise reforms in virtually every sphere. As the final authority on Dayton implementation, the High Representative substitutes for the executive, legislative and judicial branches as required. Lord Ashdown has taken to acting too as Bosnia's spiritual counsellor and cheerleader-in-chief.

All this has the effect of relegating domestic political structures to the margins, reinforcing both the dependency syndrome and the propensity of politicians to obstruct the international agenda when they can, and to seek solace in private enrichment when they cannot. If high politics is reserved for the foreigners, then the locals will busy themselves with the low politics of patronage, graft and posturing. This conundrum illustrates how inherent, structural, legal and psychological factors interact to defer "closure". It shows, too, that even benign trusteeships have sell-by dates.

The return of the big-three nationalist parties to power at both state and entity levels following the October 2002 general elections has cast some of these dilemmas in strong relief. The victory of the parties that forged and fought the war has made it hard to spin the line that everything is going swimmingly in Bosnia. Notwithstanding a low turnout (54 per cent), the technical proficiency with which these first domestically-run elections were organised, and wishful assurances that the nationalist parties had changed their spots, essentially tribal voting was back after the electorate's experiment with a non-nationalist alternative in 2000.

Yet the defeat of the internationally-created and supported Alliance for Change coalition means that Lord Ashdown is even more obviously in the driving seat, and will require the politicians both to live up to their campaign commitments to reform and to accept responsibility when things go wrong. This is what happened last week, when he forced the resignation of the popularly elected Serb member of the state presidency because of his failure to prevent either arms dealing with Iraq or contravention of the Dayton Accords by Republika Srpska military intelligence officers while serving as entity president.

There is no doubt that it would be much easier to live with and pay for the feudalised structures bequeathed by the war and Dayton if BiH were a rich country. It would also be easier to reform those structures if the people and parties could be convinced that their rationalisation would help make them rich without, at the same time, jeopardising their respective "vital national interests". As matters stand, however, relative poverty and the insecurity it brings reinforce the grip of nationalist barons. Not only can they always play the cards of national solidarity and peril to keep their constituents in line, but they can also dispense the jobs, contracts, favours, and access to criminal opportunities that make a goodly part of the populace docile or complicit. The politics of patronage, clientage and corruption also inhibits the mobilisation of cross-cantonal, inter-entity, and all-national reform movements. Bosnia's multiple fragmentation is thus a barrier to progress. But it is also an insurance policy against social disorder. Strikes, protests and demonstrations—as well as the initiatives of civil society—are invariably localised or nationally specific.

Although you would be hard-pressed to guess from walking through the shopping precincts of the country's larger cities or visiting the new hypermarkets that have sprouted on their outskirts, many still live in poverty. Some are not counted in official statistics; others keep their heads above the poverty line by legitimate and illegitimate means, running from compensatory support from family members, remittances from relatives abroad, working on the side, and black-marketeering. Nonetheless, according to recent calculations, 20 per cent of the populace lives beneath the poverty line, another 30 per cent hover around it, and the average net monthly salary is about \$215. The official unemployment rate is 40 per cent, though the World Bank estimates that the real rate may be more like 20 per cent. Youth unem-

ployment is particularly severe, and more than 60 per cent of young people tell pollsters they would emigrate if they could.

The most dismal statistics relate to GDP. Despite extremely high, aid-driven rates of growth immediately after the war, GDP amounted to just \$5.7 billion in 2002. This is less than half what it was before the war. Per capita GDP in 2001—at less than \$1,900 in terms of purchasing power parity—was just about the lowest in South-Eastern Europe. No one expects GDP to regain its pre-war level before 2010. Public spending, meanwhile, accounts for 56 per cent of GDP—a rate that only very rich countries can sustain.

As the international financial institutions, many domestic experts and the High Representative never tire of pointing out, the cure lies in transforming BiH from an aid-dependent, ill-governed, business-unfriendly, import-addicted, and deficit-ridden country in which only crooks enjoy a single market and the rule of law is capricious into its polar opposite. And if not that, then at least getting the country to the stage where it will be fiscally, legally and administratively competent to engage in the processes of European integration that can finish the job. But that, too, is a very tall order.

Progress is being made, but it is late in the day. Whereas the former High Representative, Wolfgang Petritsch, concentrated on equipping the state with institutions sufficient to produce creeping “integration by sector”, his successor has pursued what might be termed a strategy of “back to basics”: rule of law, economic liberalisation, and restructuring government. State-building is still at the centre of the agenda, but it is now directed more towards streamlining, cost-cutting, inculcating responsibility and developing competence, on the one hand, and liberating entrepreneurship, attracting foreign investors, and stimulating exports on the other.

The big project of the moment—the unification of the entities’ customs services and the introduction of value added tax (VAT) under the auspices of the state—illustrates the connections among these goals. Not only will state control over the main sources of tax and excise revenue serve to redress the balance of power between it and the entities, but it is also likely to produce vastly more revenue by eradicating the incompetence, inconsistency, and corruption that prevail in the entities’ management of indirect taxation. That these reforms are required for entry into the EU—and that the European Commission (EC) will pay for them—is another incentive.

The ongoing struggle over VAT and customs is a striking example as well of how the international community is nowadays singing from the same hymnal in Bosnia. The international financial institutions would not in the past have supported an endeavour whose object was as much political as economic. Whether because the passage of time is concentrating minds, or simply because we are lucky in the personalities who currently occupy the key positions, the outbreak of unity among the foreigners is a wonder to behold.

BiH has also been lucky in recent years that the EC has given every sign of appreciating its responsibilities and acting accordingly. Although Europe’s dismal record before and during the war created a dimension of reparation that is doubtless now diminishing in significance, self-interest continues to counsel special concern for and generosity towards Bosnia. Like the U.S., the EU can do without more instability in the region. Although the supposed terrorist threat in or from Bosnia has been much exaggerated, weak states with porous frontiers and poor people are vulnerable to financial crime and trafficking in drugs and people. Utterly failed states are more vulnerable still. The risk of total breakdown and the spectacle of hundreds of thousands of refugees again clamouring for sanctuary abroad may be slight, but the EU countries—even more than the U.S.—cannot be indifferent to it. Nor do they want more economic migrants. Europeanising Bosnia and the Balkans is a more attractive proposition than Balkanising Europe.

The decisions last year to “double-hat” Lord Ashdown as an EU special representative, to take over the police-monitoring mission from the UN and, it seems, to beef up the EC delegation in Sarajevo have testified to the EU’s commitment and emphasised Bosnia’s European vocation. These innovations are working well. The more recently mooted suggestion that the EU should also assume responsibility from NATO for the 12,000-strong Stabilisation Force (SFOR) in 2004 is more problematic.

This is not because the EU lacks the capacity or because the U.S. has reservations about abetting any detachment of the nascent EU security arm from NATO. It is, rather, because the largely psychological and confidence-boosting role now played by SFOR troops would be jeopardised by a total American withdrawal. Bosniaks, in particular, would feel abandoned. As has been agreed in Macedonia, however, a visible NATO link can be maintained. What is more important in BiH is that a visible American connection should remain. Given the unfulfilled task of catching Radovan

Karadzic, it might be best if an eventual EU force retained a U.S.-led intelligence capacity.

Although the EU has gone a long way in BiH towards redeeming past failures, investing heavily in the present, and holding out the prospect of a European future, there is no guarantee that the welcome mat will be out forever. The reason is that the commitment of Chris Patten and Javier Solana to South-Eastern Europe may be as much personal as it is institutional. Moreover, the institutional framework itself is likely to change fundamentally when ten more countries enter the EU next year and a new constitutional charter is adopted. The Commission's latest "working paper" reviewing Bosnia's halting progress towards a feasibility study and Stabilisation and Association Agreement during 2002 already shows a disposition to replace carrots with sticks. This may be good tactics and sound strategy, but it could also be an intimation that the indulgence BiH will continue to need is wearing thin.

Viennese wits used to observe before 1914 that the situation of their multinational empire might be hopeless, but it was not serious. The achievement in recent years in the Habsburgs' former outpost of Bosnia & Hercegovina is to have transformed the hopeless into the merely serious.

Mr. BEREUTER. Next, we will hear from General William Nash. He is the Director of the Center for Preventive Action, Council on Foreign Relations and, by the way, the Project Director for the CPA report, *Balkans 2010*.

General Nash, you may proceed as you wish.

STATEMENT OF GENERAL WILLIAM L. NASH (RET.), SENIOR FELLOW AND DIRECTOR, CENTER FOR PREVENTIVE ACTION, COUNCIL ON FOREIGN RELATIONS

General NASH. Thank you, Mr. Chairman.

Thank you for inviting me to participate in this hearing. But, more importantly, thank you for having the hearing. I think it comes at a very important moment for the Balkans; and it is, I think, important for the United States to tend to our business there.

I will speak to you today about our report, *Balkans 2010*. In it, we address five major issues. We discussed the re-evaluation and clarification of the objectives of the international community and the reorganization of the presence of the international community in the region. We discussed issues relating to the rule of law and the development of criminal and civil justice. We talked about restructuring of Balkan economies, including banking, taxation, trade and pension systems. We discussed returning or resettling refugees in a way that respects individual choice; and, finally, we addressed education reform and establishment of a vigorous civil society, including a free and responsible press.

In addition to my full statement, I would ask, sir, that you would include the report in the record.

Mr. BEREUTER. Without objection, that will be the order.

[The information referred to follows:]

NOTE: The above-mentioned report, *Balkans 2010*, by the Council on Foreign Relations, is not reprinted here. For information write to: The Publications Office, Council on Foreign Relations, 58 East 68th Street, New York, NY 10021. At the time of this hearing's publication, this report is also available on the World Wide Web at: www.cfr.org/pdf/Balkans_TF.pdf.

General NASH. Sir, it was important and appropriate for you to note the successes in the region in the last decade; and I just endorse your comments there.

I would highlight three areas where work remains, and that the report concentrates on. I will begin with the politico-criminal syn-

dicates. It became clear in the work of the task force that most task force members considered the organized criminal groups to be the single greatest threat to regional stability, in large part because these groups' survival depend on crushing any efforts to introduce transparency, accountability, and moderation in the political and economic systems of the state.

The assassination of Prime Minister Djindjic illustrates the scope and power of these groups, which include profiteers in alliance with hard-line politicians, unreformed agents of the police and security services, and corrupt members of the judiciary. Since his murder, as we have noted, there has been a high-profile and wide-ranging effort in Serbia to break the grip of these syndicates; and we were, frankly, pleased with this effort. I was pleased to see Secretary of State Powell acknowledge that and praise their efforts on his recent trip to Belgrade.

But more of this same work needs to be done throughout the Balkans, not just in Serbia; and the task force recommended that these campaigns be a cooperative effort involving international actors and the local national actors and that they be launched with equal vigor in both Bosnia and Kosovo, as two examples, as soon as possible.

We urge the Office of the High Representative and the U.N. mission in Kosovo, and all other relevant international agencies, to follow suit with targeted campaigns against individuals and groups associated with the illegal intersection of government and financial power. These are tasks that the United States should firmly support in cooperation with our European partners.

The second major area is expanding the politico-criminal issue into building a larger concept of the rule of law; and there, too, I would begin that effort with the arresting of the war criminals. I was heartened that Secretary Powell also encouraged this effort to the new Prime Minister and that Mr. Zivkovic pledged early this month to fulfill Serbia's obligations to the court. It is time for Karadzic and Mladic to go to The Hague. I think that conditionality remains the best stick to ensure progress on this front so long as our conditions are set in broad terms, with time limits sufficiently liberal to allow the local actors leeway in achieving the standards.

I was very impressed with a discussion—when the task force was in Belgrade, we talked to one of the principles in the Ministry of Justice; and he went into a long litany of issues that they were working. But—and I would just tell you, sir, he wanted to do right and he knew pretty much what right was. The problem was the political capital he had to expend to pass each law and move each step down the road toward this reform—and I think you understand my term “political capital”—that had to go about getting parliament to pass the laws necessary for reform and then to institute those reforms in reality. So that illustrates why it is helpful to have some leeway with conditionality, as recognition of the political reality that many of these reformers face.

But the rule of law is more about bringing war criminals to justice. It means a legal system that is administered openly and fairly, according to prescribed statutes and regulations. Individuals and organizations are held accountable. Judges, police, minority rights,

legitimate rulings are enforced. And I would emphasize that it encompasses both criminal and civil law. The latter is critical for economic development; and economic development, which has been disappointing, is crucial for any hope for a successful and stable future.

Then, finally, sir, I would like to address the issue of the international presence in the region and the future roles of the United States and the European Union, vis-a-vis the Balkans. I mean two things: Ensuring that the European Union and NATO are the primary agents of international influence in the Balkans over the coming decade and then, by restructuring the current international presence, eliminating independent policymaking by ad hoc structures and transferring those responsibilities to permanent European, NATO, or responsible local institutions.

The guiding principle for the task force was that the Balkans future does lie in Europe, both formally in terms of integration into European structures and institutions and informally in terms of shared norms and interests. Accordingly, the task force argued, as you stated, sir, that the Stabilization and Association Process within the European Union, and NATO's Partnership for Peace program and the Membership Action Plan were the best tools as a guide for the path to full integration.

The Balkans, I believe, represent a testing ground for the capability of the European Union as well as an opportunity for the development of a new type of collaboration between the United States and Europe, which could eventually contribute to the repair of transatlantic cooperation. I think it is in America's best interest to encourage the Balkan states' efforts to change, especially by using our influence in NATO, much related to the security services issues that Dr. Serwer talked about. Restarting, now, professional military education in U.S. schools for junior officers of the Serbian military should be included in this effort. It is also in America's interest to recognize and support the EU's lead in setting standards and providing assistance.

This is not to say the United States can pull up and leave the Balkans. We should stay engaged on those issues that are critical to us.

I would endorse personally Dan Serwer's comments about security services and the war criminals issue. The final status process, I think, needs to begin.

I would propose that we look into the issue of holding talks on technical and procedural matters now to set the stage for political discussions in the future. As you noted, sir, in your comments, we have less than 5,000 soldiers remaining in the Balkans. This is less than one of the brigades that went with me in 1995. It is a very significant reduction, and that marks well for the progress that we have made. But the remaining forces are needed at this time to provide that degree of stability so that all of the other political, economic, and social work can continue.

Sir, I want to thank you again for giving me the opportunity to speak to you today, more particularly for keeping a focus on the Balkans at a time when it is not at the forefront of world affairs. It is this long-term commitment by the United States and its allies that has been a foundation for the transformation of the region.

Until recently, I never thought I would have to defend the idea that staying the course and finishing the job is a necessary part of any international intervention. But we would not be at this juncture, discussing the finer points of completing the institution building in the Balkans, if we had not gone through the often messy, complicated but worthwhile tasks.

Thank you, sir.

Mr. BEREUTER. Thank you, General Nash.

[The prepared statement of General Nash follows:]

PREPARED STATEMENT OF GENERAL WILLIAM L. NASH (RET.), SENIOR FELLOW AND DIRECTOR, CENTER FOR PREVENTIVE ACTION, COUNCIL ON FOREIGN RELATIONS

Thank you for inviting me to address this hearing of the House International Relations Subcommittee on Europe. It comes at a critical moment for the Balkans, less than a month after Prime Minister Zoran Djindjic's assassination in Serbia and little more than a week after the resignation of the Bosnian Serb member of Bosnia's tripartite presidency amid scandals surrounding illegal arms exports to Iraq and alleged spying incidents. Today I wish to talk briefly about the current conditions in, and the challenges facing, the Balkan region, and to review some of the findings and recommendations in the Council on Foreign Relations' recent independent task force report, *Balkans 2010*. I ask that the full text of the *Balkans 2010* report be entered in to the record, and would like to note that the report is available at the Council on Foreign Relations' website, at www.cfr.org. Unless otherwise noted, the report reflects the consensus views of task force members. I should clarify at the outset that when I say "Balkans," I am referring primarily to the states of the former Yugoslavia, with the exception of Slovenia.

The Balkan violence of the 1990s has run its course. With democratic governments in all of the former Yugoslav republics and regionwide ambitions to join the European Union (EU) and North Atlantic Treaty Organization (NATO), there is no longer a risk of major war between states. The Dayton Agreement ended the brutal war in Bosnia and Herzegovina (BiH), and continues to provide both a framework for that country to move toward Europe and the means to root out the ethnic separatism that still holds it back. In Kosovo, the repression of the ethnic Albanians has ended and work is well underway in rebuilding that damaged society. Slobodan Milosevic, the primary architect of the decade's violence, is on trial for his crimes at the international tribunal in The Hague. Across the states and regions of the former Yugoslavia, democratic governments share a common ambition to join the European Union and NATO.

But work remains, and there are three areas from our report that I would like to emphasize. The first is the absolute necessity of confronting the politico-criminal syndicates that are endangering the development of democracy and free markets across the Balkans. The second and related point is the importance of building the rule of law, both civil and criminal, in the region. And the third is the essential reform of the international presence in the Balkans.

I'll start with the politico-criminal syndicates. In the course of working on the *Balkans 2010* report, it became clear that many task force members considered the organized criminal groups to be the single greatest threat to regional stability, in large part because the groups' survival depends on crushing the effort to introduce transparency, accountability, and moderation into the political and economic systems of the state. The assassination of Prime Minister Djindjic, attributed to an organized crime network with strong ties to former president Slobodan Milosevic's regime, tragically illustrates the scope and power of these groups, which include criminal profiteers in alliance with hardline politicians, unreformed agents of the police and security services, and corrupt members of the judiciary.

Since the Prime Minister's murder, there has been a high-profile and wide-ranging effort in Serbia to break the grip of these syndicates, and this effort was rightly praised by Secretary of State Powell during his recent visit to Belgrade. However, this sort of concerted effort against politico-criminal syndicates is needed beyond Serbia. In fact, a principal recommendation of the *Balkans 2010* task force was the implementation of vigorous campaigns aimed at crippling the politico-criminal syndicates that threaten internal and regional security. The task force recommended that these campaigns be a cooperative effort involving international actors and local forces, and that they be launched first in Bosnia and Kosovo, where the international presence is greatest. Now that Serbia has taken the initiative against these groups, it is all the more important that authorities in other areas, including the

Office of the High Representative (OHR) in Bosnia and the UN Mission in Kosovo (UNMIK), follow suit with targeted campaigns against the individuals and groups associated with the illegal intersection of government and financial power. The United States should firmly support these efforts. Simply put, reform won't stick so long as these politico-criminal groups are flourishing.

The second major issue I want to address is the importance of building the rule of law. First, you can't talk about building the rule of law in the region without reiterating the absolute necessity of arresting war criminals, especially Radovan Karadzic and Ratko Mladic, and sending them to The Hague. I was heartened that Secretary of State Powell strongly encouraged Serbia's new Prime Minister, Zoran Zivkovic, to continue cooperation with the Hague Tribunal during his recent trip to Belgrade, and even more so that Mr. Zivkovic pledged on April 7th to fulfill Serbia's obligations to the Court. I also believe that conditionality remains the best stick we have to ensure that progress on this front continues, so long as the conditions are set in broad terms, with time limits sufficiently liberal to allow local actors some leeway in achieving the required standards. Inflexible and arbitrary cut-off dates can be counterproductive when substantial progress toward the required standards is underway. But when there is continuous failure to abide by conditions, there must be a willingness to halt funding to demonstrate the consequences of inaction.

But rule of law is about more than bringing war criminals to justice. It means a legal system in which justice is administered openly and fairly according to prescribed statutes and regulations, individuals and organizations are held accountable, judges are impartial, minority rights are protected, and legitimate rulings are enforced. It encompasses both criminal and civil law: the latter is crucial for economic development, and economic development, in turn, is crucial to any hope for a successful, stable future for the Balkans. Indeed, strengthening the rule of law in both civil and criminal spheres is vital for achieving progress on other fronts in the region, as Secretary of State Powell rightly pointed out when he linked the extradition of war criminals with success against organized crime and the implementation of military reform.

Finally, I want to focus on the role and structure of the international presence in the region, in particular the current and future roles of the United States and the European Union vis-a-vis the Balkans. By this I mean two things: ensuring that the European Union and NATO are the primary agents of international influence in the Balkans over the coming decade; and restructuring the current international presence to eliminate independent policymaking by *ad hoc* structures and transferring those responsibilities to permanent European or responsible local institutions.

The guiding principle for the task force's work was that the Balkans' future lies in Europe—both formally, in terms of integration into European structures and institutions, and informally, in terms of shared norms and interests. If Europe is the goal, then Europe has to be the path, albeit with strong U.S. support and interests. Accordingly, the task force argued that the EU's plan for the region—the Stabilization and Association Process—is, in conjunction with NATO's Partnership for Peace program and Membership Action Plan, the best tool for putting the Balkan states on the path to full integration with western Europe by 2010.

The Balkans represent both a testing ground for the capability of the EU as well as an opportunity for the development of a new type of collaboration between the United States and Europe, which could eventually become a template for future trans-Atlantic cooperation. While it is in America's interest to encourage the Balkan states' efforts to change—especially by using its influence in NATO to ensure a stable security situation and to guide military reform—it is also in America's interest to recognize and support the EU's lead in setting standards and providing assistance, and to help the EU stay the course and keep it accountable for its end of the deal.

This is not to say that the United States can pull up stakes and leave the Balkans to the Europeans. In fact, there are elements of American involvement that are unmatched by Europe and will remain crucial in the region, including the U.S.'s unique political clout and its ability to speak with one voice. There are approximately 1,800 U.S. troops in Bosnia and 2,400 in Kosovo, drawn down significantly from previous highs but still necessary to help keep the peace and signal the U.S.'s ongoing commitment. Nor am I saying that the United States cannot stick up for its principles, interests, or methods—such as the use of conditionality—where those may diverge from our allies. Rather, the crucial point is that, while continued American engagement remains necessary for the Balkan states to achieve the stability that will make them productive partners, the current challenges facing the United States from areas other than the Balkans means that it is in the U.S. interest to take a supporting, rather than dominant role in Balkans reconstruction.

In terms of the structure of the international presence: in the interest of time I won't say much about that here, except that the current structure of international bodies in the region is inefficient and requires streamlining, and furthermore that the ultimate goal for the international presence is eventually to dismantle the *ad hoc* structures and transfer that authority to permanent European institutions or, preferably, competent local institutions. I refer you to the task force report for a more detailed discussion.

I again thank the Committee for giving me the opportunity to speak to you today and, more particularly, for keeping a focus on the Balkans at a time when it is not at the forefront of world affairs. It is this long-term commitment by the U.S. and its allies that has been the foundation for the remarkable transformation of this region. Until recently, I never thought I'd have to defend the idea that staying the course and finishing a job is a necessary part of any international intervention. But we would not be at this juncture, discussing the fine points of completing the institution building of these fledgling democracies, if we had not gone through these often messy, complicated, but worthwhile tasks. Thank you.

Mr. BEREUTER. Thanks to all of you for your written testimony and for your comments here today.

I am going to turn first to the gentleman from Massachusetts, Mr. Delahunt, for questions under the 5-minute rule times two. We are going to do 10 minutes each for a little more continuity in questions.

Mr. Delahunt.

Mr. DELAHUNT. Well, thank you, Mr. Chairman.

I find it rather interesting to look out here and see the rather sparse attendance at this particular hearing when I think it was you, General Nash, that indicated that a while ago there would have been a room crowded with TV cameras and reporters and there would have been lines waiting outside.

Staying the course, to use your term, General Nash, I think is something that we all should reflect on, particularly in the context of the moment. While I serve on this particular Subcommittee, my focus here on the Full Committee has been mostly dealing with Latin America, Central America and those issues.

But it is interesting to listen to the problems and to the suggestions and to the themes that you all repeated, security forces, rule of law, both criminal and civil, because truly they are universal in nations that are emerging, if you will, democracies, whether it be Venezuela or Colombia or Haiti or Nicaragua or in the Balkans. It is the same set of issues, the same set of concerns that are expressed by those who study these issues wherever. I suspect that we will be hearing a year or 2 years from now another group as conversant with Iraq as you gentlemen are with the Balkans.

Let me ask a question. The three of you have obviously spent considerable time and are very familiar with the problems of transition to democracy. Have you been consulted at all regarding Iraq and what the potential future is in terms of our involvement there? Dr. Serwer?

Mr. SERWER. Mr. Congressman, I think the answer in the case of the United States Institute of Peace and of me personally as well is yes. We have been consulted. We were consulted on issues of vetting and rooting out elements of the old regime. We have been consulted on questions of institution building. We have been consulted on questions of transitional justice and rule of law. That is not to say that we couldn't have done more. It is not to say that in the rush to get things done every bit of our good advice was taken. But yes, I do think that we have been consulted and we have used a

very broad range of experts from universities, from other think tanks and other institutions, international organizations. We are continuing those consultations right now.

Mr. DELAHUNT. That is very encouraging. I wish that this kind of information had been made known to Members of Congress who have expressed concern about postwar reconstruction of Iraq.

Dr. Wheeler, have you been, given your depth of experience and knowledge, in this area?

Mr. WHEELER. Where I live in Sarajevo we are so far off the beaten track of international journalists now that the only time somebody from the New York Times or Reuters comes around to see me is when there is something big happening, and the inevitable question is what are the lessons from Bosnia? This happened in the autumn of 2001 in regard to Afghanistan and of course it has been happening in recent weeks in regard to Iraq. As a consequence, I have had to give some thought about what lessons there might be.

Unfortunately, the most compelling lesson is probably that there isn't one, in the sense that there is not an off-the-shelf kind of set of assumptions that you can expect the handlers of any new crisis to actually apply. In other words, the exigencies, the imperatives of any given set of circumstances are going to almost always mean that nobody is going to pay any attention in the heat of the moment, in the time of crisis, to the theoretical lessons that academics are going to have a lot of fun writing about in future years.

Mr. DELAHUNT. General Nash.

General NASH. The Council on Foreign Relations, sir, has done a number of studies on the postwar Iraq issues and I have been an active participant in those deliberations and assisted with the publication. Additionally, I am very proud to say that a number of former officers that served with me in Bosnia are senior members of the Central Command staff responsible for areas of postwar efforts, and we have had informal discussions. Though I have not been asked formally by anybody in the Department of Defense to provide advice, the fact that I—

Mr. DELAHUNT. Possibly the Department of State, also?

General NASH. Or the Department of State or the fact that I occupied Iraq for 2 months following Operation Desert Storm. I have provided my views freely in a number of public ways, sir.

Mr. DELAHUNT. We thank you for the pro bono work, General. I hope they have your cell phone number. I concur with you, Dr. Wheeler, in terms of uniqueness and particular circumstances in many respects, but there are really general themes, as I said earlier. During the course of these hearings, we talk, for example, about the Balkans but I hear it all the time about Latin America. The movement toward democracy has really progressed rather rapidly if we are talking about elections. But when we are talking about democratic institutions, it is an extremely painful process. We have all experienced the pain in the Balkans. I just think that for those of us who are concerned about this instant crisis, given the nature of our arrival and our intervention, that this is going to be a very long, long and arduous journey. Your expertise, I would hope, would be made available, not just to the Administra-

tion but on a continuing basis to individual Members of Congress as well as this particular Subcommittee.

I do agree, by the way, that if there is one obvious problem, and I think you have all touched upon it, it is the vetting of the security services, and that is true whether it is Northern Ireland or Haiti or Bosnia. I think we grasp it intellectually but we do not make the resource commitment that is necessary. This is staying the course. This is not a 2- or a 3- or a 4- or a 5-year effort. This has to be sustained over a period, I daresay, of a decade or longer to ensure that the culture that evolves in terms of the security forces is one that is consistent with democratic principles. I have always wondered and suggested during other hearings that the kind of training that we do is done on an ad hoc basis. It is for a period of time.

I have been talking recently to Members of the Subcommittee about a school of Americas for democracy which would actually be a venue, a campus, if you will, where there would be a consistency over an extended period of time, where the staff would be bilingual, would be multinational, where this would be an ongoing, sustained part of our foreign policy. Because with all of our deficits in terms of our security forces, our law enforcement sector, I think we have a vital role there in terms of not just democratizing the Balkans or Latin America but elsewhere in the country.

We are doing this today as part of—and I won't go on too much longer, Mr. Chairman, if you will indulge me. We are making this effort today in Northern Ireland. In Northern Ireland. The policing issue is a key issue in terms of the Good Friday agreements. If that can be resolved, I daresay, in terms of the police force in Northern Ireland, that we will see full implementation of the Good Friday Agreement in Northern Ireland, and they are looking to the United States to assist in that effort.

Comment, if you will, and I won't take any more time.

Mr. BEREUTER. Dr. Serwer.

Mr. SERWER. If I might, Mr. Chairman, I too think that there are some general lessons and I wanted to offer them. In my view, public security is job one. What we are seeing today in Iraq is most unfortunate, because we are seeing a situation in which people will not feel secure, will not feel protected. What you get in that situation is the formation of gangs, often on an ethnic basis. You get organized crime. Some of those folks looting today are looting resources that they will use to set up their businesses. It becomes more and more difficult every day that passes to reverse the situation. So I think public security is job number one. Apparently no provisions have been made for civilian policing in Iraq for the moment, so it has to be done by the soldiers. I might prefer that they not have that burden, but I think it has to be done that way.

Governance is really job number two. I won't go into that but I wanted to underline the importance, in addition to your long-term concerns, of the immediate need for public security.

Mr. BEREUTER. Dr. Wheeler.

General NASH. Amen. Amen, sir.

Mr. WHEELER. I can, of course, think of a few negative lessons as well as these—I couldn't agree more, that all the issues associated with law and order, rule of law, are the most fundamental

ones. But there are some things that the international community is best not advised to do or make the centerpiece of either their exit strategies or their celebrations of their victories. One, of course, is early elections. Too many times, we have seen in other places, including Bosnia & Hercegovina, too much importance placed on the notion that democracy in all its glory will be fundamentally restored once you have elections. There has also been a tendency in some places to imagine that there were some shortcuts.

One particular problem in Bosnia in the early years was the idea that if you somehow established a free media, people would immediately start loving each other once more and democracy and peace and brotherhood would be assured. The belief in magic bullets or magic cures is misplaced.

Going soft at the beginning is another error that we certainly can learn about from the experience in Bosnia & Hercegovina, being frightened of the bad guys, being frightened to confront the hardliners assiduously at the start. You pay a price over many years if you actually fail to confront the enemies of peace at the very beginning who take it for granted that of course you are going to remain weak, and so some time has to be wasted in that respect.

I think that is enough negative lessons.

Mr. BEREUTER. Thank you. We are going to go for reasons of his Floor schedule to Mr. Engel next. The gentleman from New York is recognized for 10 minutes.

Mr. ENGEL. Thank you, Mr. Chairman. I want to first talk about the situation in Kosova and I am wondering if you could comment. Some observers believe that as long as the U.N. Secretary-General's emissary remains the highest authority in the land that neither the politicians from Kosova nor its citizens can really develop a true sense of responsibility toward the country as a whole, including its binary population. I am wondering if you could comment on that. I said in my opening statement that I thought final status discussions should not be shelved indefinitely because I think that if we do that, we will find as the years go by we may be in a situation that we may not like. I think now is the time that we can discuss this issue and have democracy in Kosova.

I am wondering if anyone would care to comment on that question. Dr. Serwer?

Mr. SERWER. Mr. Engel, I agree entirely with you on the need to begin the process of decision making on final status. I do not think that the SRSG, the Special Representative of the Secretary-General, is at this point a great hindrance to the Kosovo institutions feeling responsible. In fact he has presented a plan for turning over all the authority he can, all the responsibilities he can, under Resolution 1244, by the end of this year. The real problem is that in order to decide Kosovo final status 1244 has to be changed. The only way of changing it in my view is through a negotiated solution between Belgrade and Pristina. I don't see how a new Security Council resolution is going to pass without Belgrade's having accepted it. The question is, can we design a process that will bring Belgrade and Pristina to some sort of negotiated agreement, one that satisfies at least part of each of their needs and probably not all of either side's needs.

I believe that there are many options and that the pure options that you referred to are not likely to be the only ones on the table. There are possibilities for all sorts of conditions being imposed on any proposed compromise solution, and I think we would all expect some conditions. After all, who will defend Kosovo if it were to become independent? I don't know anybody who has solved that problem. It will require security guarantees from NATO, from Serbia. I don't know from whom. How are its borders with Albania and Macedonia to be secured? It is going to require guarantees by Kosovo to its neighbors.

I don't mean to suggest that independence is the only outcome. I think there are a number of other possible outcomes, and what we need now is to begin the process of searching for a decent outcome, a decent negotiated solution.

Mr. ENGEL. Talk to me about other outcomes because you and I have had some discussion in the past. I am convinced that independence ultimately is the only outcome. What other outcome can there possibly be? You surely don't think that there can ever be any kind of a federation with Serbia anymore. Maybe in my estimation 10 years ago that might have been possible, but my feeling is that Milosevic through his repressive policies in essence caused the Serbs to lose Kosova.

What would be an alternative to independence?

Mr. SERWER. Congressman, we have offered a number of alternatives in our paper on Kosovo options. Just to cite a couple of them, there is the possibility of nominal sovereignty that Serbia would preserve even though Kosovo might have a seat at the United Nations, for example.

There is the possibility of partition, or exchange of territory, or exchange of populations. I don't mean to be advocating any of these things. It seems pretty clear to me that Belgrade before the assassination of Zoran Djindjic was prepared to come to the table with a proposal for partition and exchange of populations. It is not something that I would advocate, but it is a solution that Belgrade is certainly entitled to advocate.

What does independence mean for a place like Kosovo? What does it mean about its relationship with its neighbors? How will it be defended? What kinds of security guarantees will it give to Macedonia? There are all sorts of problems that have to be resolved. This can't be like the independence of the United States, declared one day, fought hard for and established unequivocally the next. Kosovo is not in that situation. It is not the 18th century. It is the 21st century. It is going to be a whole lot more complicated.

Mr. ENGEL. There are people who say that Mr. Djindjic, obviously before his assassination, in private would say that he understood that the Serbs have lost, or Belgrade has lost Kosova, but as a politician he couldn't really advocate that or say that.

In the event of Belgrade-Pristina negotiations, could you envision a day where a Serbian politician could permit Kosova to leave at least nominally or be independent and survive politically?

Mr. SERWER. I believe it is generally accepted in Belgrade today that Belgrade will never again govern the Albanian population of Kosovo. That doesn't mean that anybody in Belgrade supports independence. I talked with Zoran Djindjic about this a number of

times before his death. He certainly was not aiming to hold on to all of Kosovo or to govern Kosovo again in the future. I don't think he was quite reconciled to what you would regard as a satisfactory independence outcome. But the fact is that Belgrade Serbs have to ask themselves whether a democracy in Belgrade can claim to govern a population that won't send any representatives to Belgrade. My view is that they have signaled clearly already that they intend at most to govern Serbs in Kosovo and not to govern Albanians. But we need to work out a structure in which the Albanians can be satisfied with an outcome of that sort. So far they have not been prepared to accept it and that is their right and that is what the negotiation has to be about.

Mr. ENGEL. You mentioned borders. If anyone else would like to comment, I would be interested in hearing anybody else's feelings on this. There have been proposals from time to time during the Bosnian War, for instance, of changing or shifting of borders. I know it makes people very nervous when you start talking about that. You say, for instance, you take the case of Bosnia, for example. It is partitioned between the Republic of Srpska and the Croat/Bosnian Muslim entity. The Croat/Bosnian Muslim entity I think is a bit farcical because those communities while on paper are working together in the country, the report that we get is that the factions are actually different. Is it folly to start envisioning a situation where if the Serbs in Bosnia would want to be incorporated into Serbia, if the Serbs would shift borders, if different borders could be shifted? Is that something that anyone is talking about seriously? Or is it a situation where it is a terrible can of worms and once you open it, where does it end?

Mr. WHEELER. It is certainly, Mr. Engel, a horrible can of worms which would be much better off not opened. Once you open one of these questions, then all of the rest tend to come out, usually in surprising and extremely unacceptable and distressing ways. This is why it seems to me, going back to your interest in Kosovo, any international support for current ideas in Belgrade, of lopping off the northern 20 percent of Kosovo, should be resisted. This of course was the quid pro quo which Djindjic expected to get and is the sweetener which many Serbs expect to receive in return for acknowledging what I would agree with you is the certain loss both of the territory of Kosovo, Metohia as they like to call it, and the people who live there.

As far as Bosnia is concerned, Bosnia & Hercegovina is concerned, quite honestly I think we are fortunate, and I tried to make this point, that an ever decreasing minority of people living in Bosnia & Hercegovina actually envisage in a serious way carving up the territory of that particular sovereign state. It is vulnerable and therefore there is tremendous alarm expressed whenever talk of partitioning Kosovo or talk of compensating Serbia for the loss of Kosovo with the unification of Serbia and grip over the Serbs that comes up. These are very dangerous and destabilizing features. We have already fought too many wars over territories and frontiers. We should be much wiser to leave territorial settlements pretty much as they are.

Mr. ENGEL. Mr. Chairman, I am wondering if I could just have your indulgence for one more question.

Mr. BEREUTER. Briefly, yes.

Mr. ENGEL. Yes. Mr. Serwer, it is my understanding that Ali Ahmeti, who is an ethnic Albanian politician in Macedonia, has requested a visa to come to the United States but he hasn't been approved. I am wondering if you have an opinion on that, whether he should receive his visa and be removed from the so-called black-list given his role in the war? Also, how is he functioning in the Macedonian government and the level of acceptance of him?

Mr. SERWER. Mr. Engel, my understanding is the same, that he has requested a visa. The United States Institute of Peace under my signature invited him some time ago to come speak in Washington on a program that will make it quite clear that he accepts the territorial integrity and sovereignty of Macedonia. He has been participating actively and positively in the peace process in Macedonia. I think he is one of the mainstays of that process at this point. It seems to me clear enough that the time has come that he should visit Washington, become more familiar with the scene here, and give us a better idea of who he is and how committed he is to this peace process. I would very much welcome his getting a visa, but I don't determine that and I understand that it is somewhere in the bureaucratic process.

Mr. ENGEL. Thank you.

Thank you, Mr. Chairman.

Mr. BEREUTER. You are welcome. The gentleman from Florida, Mr. Wexler, is recognized.

Mr. WEXLER. Thank you, Mr. Chairman. I first want to apologize for missing your oral statements. I was at another meeting as was Mr. Engel. You won't believe me, but I actually read your statements last night. If you have spoken to this at great length, please tell me and there will be no reason to repeat it, but I was hoping that you could, any member on the panel or all three, speak to the issue of the European Union taking over the force in Macedonia. It seems to me that while that is something that, while not gone unnoticed by this Subcommittee, may be one of the most fundamental new directives or new directions coming out of European policy that will have fundamental ramifications in the future, both by the way Europe reacts to different situations and possibly to the way the United States reacts. I was hoping that you might be able to comment both from an American and from a European perspective, what different dynamic the European Union taking charge of Macedonia and potentially in further exercises what dynamic that creates?

And, if there is time, the second question I would ask in that all three of you are such experts on this region, are there any lessons that we should learn from the rebuilding of the Balkans that should be applied to the rebuilding of Iraq? Are there any analogies to be made? Are there any suggestions that you have where mistakes or different courses in this region could have been taken that are applicable to Iraq and what lessons, if any, should we take to Iraq regarding our experiences here?

General NASH. Sir, if I could, I will start on the first one. I am less concerned about the fact that the European Union is interested in developing their own ability to have a peacekeeping force or a military force to pursue common objectives, than I am that the

United States as a NATO member, and the NATO membership as a whole, is less interested in being involved in these issues. In other words, I am not concerned that Europe is trying to do it, I am concerned that NATO is not wanting to do it more and remain involved.

So I look upon the Macedonia case as more an abrogation by NATO of its responsibilities; and frankly, I look at that as the fact that the United States did not want to do it and therefore NATO backed off and the European Union picked up the bill. I think it is reflective of a trend that we are going to see more and more of: That is, the development of a capacity by the European countries to develop an independent military force to use at the time and place of their choosing without necessarily having reference to the United States. That is not necessarily bad in its own right, but it is in fact a reflection of their concern about our interest in such tasks and what they would perceive as the difficulty in working with us.

Mr. SERWER. If I might, Congressman, I welcome the EU taking over the mission in Macedonia. I think it is a good thing. It is being done in close collaboration with NATO, which is providing some assets to support that mission. I think it is likely to be a good model for the future, in particular in Bosnia. I am not really concerned that the Europeans will develop too much independence in this respect. I think we are a long way from that. I think that what they need to develop is greater credibility, and credibility has less to do with their actual military capacity, which is more than sufficient for anything they face in the Balkans today, and more to do with unity of purpose and command and control.

The Europeans remain very divided among themselves. You can play them off one against the other. They have some super people now running their operations in the Balkans: Solana, Patten, Busek, Steiner, Ashdown. These are great people. But there are five of them and it is not clear who is in charge of whom. So I think there are real problems still with European credibility that come from their command and control issues and their lack of unity of purpose, and I think they have to work more on that. Having some military force to deploy, having some police force to deploy, because after all they have taken over the police mission in Bosnia as well, it seems to me will encourage the kind of unity of command and control that is required.

I would encourage greater European unity. I think a strong European partner may occasionally cause us difficulties but in the end will be a great asset.

Mr. WHEELER. I agree totally with everything that Dr. Serwer has just said, and in fact I think we would regard what happened with the force in Macedonia as truly epic-making if it weren't for the fact that only 325 soldiers are involved, which rather takes some of the thrill out of the proceeding. Because what really is impressive is the extent to which an arrangement was arrived at even in these times for a French brigadier general to take over this under NATO auspices. It shows that arrangements of any sort, whether we are talking about arrangements for conditional independence of Kosovo or anything else do tend to be possible if there is enough good will.

Mr. WEXLER. If I could, I understand Mr. Delahunt asked a very similar question with respect to Iraq, so there is no reason for anyone to answer my second question.

General NASH. I just said amen to Dan's answer on that one, sir. If I could just add one point very quickly. One of the lessons of Bosnia vis-a-vis Afghanistan was that in Bosnia we provided a very strong military force to establish that aura of public security that Dr. Serwer talked about earlier as being a critical aspect. But the political arrangement within Bosnia-Herzegovina as part of Dayton was an artificial political arrangement that was made largely by people that were not citizens of Bosnia-Herzegovina. In fact, only one signatory of the six or so that signed it were citizens of Bosnia-Herzegovina. So in Bosnia we had a strong military force to establish public security and an artificial political arrangement.

In Afghanistan, we went to great lengths to create a political arrangement, bringing together as many Afghan players as possible to help devise and bond the political arrangements for the interim government and the transition process, but we did not provide a sufficient security force to ensure that the entire country of Afghanistan had the requisite security and public safety to proceed down this political path.

If you are asking for a lesson, I would suggest to you a military solution not unlike Bosnia and a political solution that followed a process somewhat like Afghanistan.

Mr. WHEELER. Which is another way of saying that it would be a good idea to trust the arrival of the transitional political authority in Iraq to something like what happened in Afghanistan; in other words, internationalize it.

Mr. SERWER. I confess I don't agree with that. I believe that the U.N. is in no position to lead the political process in Iraq. I think the Americans have vital interests in Iraq that are engaged with the question of who governs Iraq. Having done what we have done, I think we will keep that under our control, with a lot of advice from others.

Mr. WEXLER. Thank you.

Mr. BEREUTER. Thank you, Mr. Wexler. I do have some questions, more than I can probably fit in here. Maybe the first sort of straightforward question would be directed to you, General Nash, but the other two witnesses certainly should feel free to make a contribution. I have a friend who is a retired general in the Italian *Carabinieri*. It has its equivalent in Spain and France and I understand a little bit about its training and its military and police functions. I wonder if you have an opinion about whether or not this kind of force could play a larger role in general in replacement for soldiers who are attempting to be peace enforcement people in these kind of conflicts and if you know whether or not any formal study has been given to that idea.

General NASH. Sir, the idea of a constabulary type force, a *carabinieri-gendarmerie* of type force that combines low-end military with high-end police capacity in the pursuit of peacekeeping/public security issues has been of interest both to the Council on Foreign Relations and a number of other agencies around town, to include the U.S. Institute of Peace. I think it is a worthy objective. Obviously, as you mentioned, there are a number of nations that have

such a capacity. In the Balkans, we were able to draw on that capacity to a certain degree, even in the American sectors, and to use it for various tasks and that was very valuable. I would encourage the United States to create a similar capacity for a wide ranging variety of missions, but I can't give you a way to pay the bill, sir; and I am not going to train a division for such a capacity, given the fact that they are limited to the extent to where they can operate, whereas it is my judgment that the military forces, with specialized training, are able to handle many of the constabulary duties, supplemented by certain expertise and the like.

Mr. BEREUTER. Dr. Serwer, I see you want to respond to that.

Mr. SERWER. May I just add, Mr. Chairman, that we have done quite a bit of work on this question, particularly constabulary forces for Iraq. We have published a paper that with your permission I will provide to your office.

Mr. BEREUTER. I appreciate it.

[The information referred to follows:]

UNITED STATES INSTITUTE OF PEACE www.usip.org

SPECIAL REPORT

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ABOUT THE REPORT

The United States and its allies have taken military action to restore democracy and the rule of law in Iraq. Prior to the intervention, the United States Institute of Peace held a workshop on February 19, 2003 on "Establishing the Rule of Law in Iraq" to examine this challenge. The workshop's discussion focused on a paper prepared by Robert M. Perito, senior adviser to the Institute's Rule of Law Program. In addition to Perito, the other principal speakers at the workshop were Lt. Col. Michael Kelly, Australian Army, and Michael Hartmann, senior fellow at the Institute. Kelly discussed the application of the Fourth Geneva Convention in peace operations, drawing upon Australia's experience in Somalia and East Timor. Hartmann described the United Nations experience in using international jurists in Kosovo. Paul Stares, director of research and studies at the Institute, chaired the workshop.

Robert Perito prepared this report. It draws on the views expressed by participants during the workshop, which was held on a not-for-attribution basis.

The views expressed in this report do not necessarily reflect views of the United States Institute of Peace, which does not advocate specific policies.

Establishing the Rule of Law in Iraq

Briefly . . .

- In Iraq, the immediate post-war period is likely to be difficult, confusing, and dangerous. Based on the experience of previous peace operations, the U.S.-led coalition's most important objective should be establishing the rule of law. The Fourth Geneva Convention makes this an obligation for the U.S. military administration. It will also be necessary to ensure that post-conflict reconciliation and reconstruction go forward successfully.
- Saddam Hussein exercised power in Iraq through a sophisticated structure of security services, revolutionary courts, emergency decrees, a network of informers, and the brutal crushing of dissent. The security services, special courts, and emergency laws must be dismantled, and the regular police, judiciary, and legal system reformed and reconstituted.
- It will be necessary to establish an international war crimes tribunal to consider the cases against Saddam Hussein and other major offenders and to create special Iraqi courts to deal with lesser figures. There may also be a need to establish a mechanism similar to the "truth commissions" used in other countries to provide a forum for victims and offenders to present their grievances and confess their crimes.
- According to administration officials, the United States plans for a military administration to rule Iraq until conditions stabilize. Authority would then transition to an Iraqi regime that would come to power on the basis of a new constitution and democratic elections. During the period of occupation, the U.S.-led coalition would be responsible for internal security, public order, and introducing the rule of law.
- Unfortunately, the United States is ill prepared to perform this function. American troops can enforce public order, but soldiers are not trained or equipped to deal with civil disturbances and law enforcement. The United States does not have civilian constabulary forces, nor does it have a national police force that could provide personnel for Iraq. The United States is the only country that uses commercial contractors to staff its contingents in UN police missions.
- To establish the rule of law in Iraq, the United States should create a civilian "Stability Force" composed of constabulary, police, and legal teams of prosecutors, judges, and corrections officers. This force should arrive in Iraq as soon as possible after conclusion of the conflict. It should work with local police, courts, and prisons to

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maintain public order, control crime, prosecute war criminals, protect minorities, and ensure respect for human rights.

- The United States must be prepared to bear the burden of establishing the rule of law in Iraq. This will not be easy, but the contribution of a U.S. Stability Force to creating sustainable security will be more than worth the effort.

ABOUT THE INSTITUTE

The United States Institute of Peace is an independent, nonpartisan federal institution created by Congress to promote the prevention, management, and peaceful resolution of international conflicts. Established in 1984, the Institute meets its congressional mandate through an array of programs, including research grants, fellowships, professional training, education programs from high school through graduate school, conferences and workshops, library services, and publications. The Institute's Board of Directors is appointed by the President of the United States and confirmed by the Senate.

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INTRODUCTION

The United States faces an unprecedented security challenge. It arises from a global terrorism whose adherents are willing to sacrifice their lives and to use weapons of mass destruction. U.S. military forces and their Afghan allies have driven al Qaeda and the Taliban from Afghanistan, but the leadership has survived. We are entering the second phase of the war on terrorism. The ongoing search for al Qaeda operatives has been punctuated by terrorist attacks abroad and periodic alerts for new attacks in the United States. Concurrently, the Bush administration has sounded an alarm concerning the threat posed by an old enemy, President Saddam Hussein of Iraq. According to President Bush, Iraq "possesses and produces chemical and biological weapons. It is seeking nuclear weapons. It has given shelter and support to terrorism and practices terror against its own people. While there are other dangers in the world, the threat from Iraq stands alone because it gathers the most serious dangers of our age in one place" (Associated Press, October 8, 2002).

There should be no illusions that post-war Iraq will be anything but difficult, confusing and dangerous for everyone involved. The U.S.-led coalition will have to adjust quickly from combat to peacekeeping operations to avoid a new outbreak of ethnic and religious strife. Without a total commitment by coalition forces to maintaining public order, Iraq's ethnic and religious factions will again descend into a fury of revenge-taking that will leave large areas of the country in chaos. If such a breakdown in public order occurs, neighboring states could be expected to interfere to support their proxies, protect their co-religionists, and promote their interests. Failure of coalition forces to control widespread civil disturbances would also prevent international humanitarian assistance agencies and non-governmental relief organizations from reaching those in need. Intervention forces may also have to deal with areas affected by the release of chemical or biological weapons and to aid those affected.

Given the type of operational demands that would be placed on coalition forces in the post-conflict period, the international security forces chosen to perform this function should be the most capable forces available. Further, the Iraqi people would likely prefer that the peacekeeping force be composed of Americans and Europeans rather than soldiers and police from the region. In the initial phase of the post-war transition, members of the U.S.-led coalition would be responsible for restoring public order, providing security, and ensuring effective law enforcement as part of their obligations as occupying powers under the 1949 Fourth Geneva Convention.

Under the Geneva Convention, the Law of Occupation applies whenever a foreign military force is in a country without the government's consent. There is no exception and there does not have to be armed resistance. Occupying powers have the responsibility to maintain public order and respect human rights. They also have an obligation, subject to certain exceptions, to preserve existing laws and institutions. They do, however, have the authority to repeal unjust laws and promulgate new regulations, as needed to ensure security and maintain the orderly administration of the territory, establish criminal courts, detain individuals, and remove and appoint local officials. They can seize state-owned property and use the proceeds to finance the occupation. They can also collect taxes and use them to run the military administration. Since the U.S.-led coalition will not have a UN Security Council mandate, the Geneva Convention will constitute the principal legal basis for occupying and administering Iraq.

As we have learned from previous peace operations, the most important objective in the initial phase of the post-conflict period is to establish the rule of law. In his pre-departure press conference on December 17, 2000, Bernard Kouchner, the senior UN official in Kosovo, said the "lesson of Kosovo" was that "peacekeeping missions need to arrive with a law-and-order kit made up of trained police, judges, and prosecutors and a set of draconian security laws. This is the only way to stop criminal behavior from flourishing in a post-war vacuum of authority" (R. Jeffrey Smith, "Kosovo Still Seethes as UN Official Nears Exit," *Washington Post*, December 18, 2000, A20). Such a judicial package must be supported by effective military forces that can quickly subdue armed opposition, disarm opposing forces, perform basic constabulary tasks, and ensure that civilian law enforcement officers and administrative officials can perform their functions in an atmosphere of relative security.

The first step for the intervention force is to break the cycle of impunity for those who commit criminal acts of violence. Democratic governments, including those emerging in post-conflict states, must be rooted in the rule of law. Post-conflict states must provide their populations with security, stability, personal safety, and the assurance that transparent law enforcement and judicial processes provide the same protections and penalties for all citizens. Such regimes need help in accomplishing this mission. Recent peace operations demonstrate that the international force has to make immediate progress in this area; without it, international engagement will be jeopardized by a loss of credibility and an entrenchment of organized crime, extra-judicial processes, and terrorist activities.

Paddy Ashdown, the high representative in Bosnia, also confirmed the importance of the rule of law. According to Ashdown, "In Bosnia, we thought that democracy was the highest priority and we measured it by the number of elections we could organize. In hindsight, we should have put the establishment of rule of law first, for everything else depends on it: a functioning economy, a free and fair political system, the development of civil society, and public confidence in police and courts. We should do well to reflect on this as we formulate our plans for Afghanistan, and, perhaps, Iraq" ("What I Learned in Bosnia," Press Office, Office of the High Representative, October 8, 2002).

For Ashdown, "rule of law" meant the provision of effective police, courts, and prisons. Beyond these immediate core elements, establishing the rule of law in post-conflict societies also involves dealing with human rights violations and crimes committed during and prior to the war. The relatively rapid arrest, trial, and punishment of regime officials and military officers who have committed major abuses are important to achieving a sense of justice. It is also important to remove fear from the society and to deter individuals from seeking revenge. In addition, there is a long-term need for a mechanism or forum that allows people who have suffered to describe their experiences publicly, assign blame, and have their statements recorded as part of the formal history of the conflict.

IRAQ'S INTERNAL SECURITY SYSTEM

In Iraq, Saddam Hussein exercises power through a sophisticated security structure, a vast network of informers, and extreme brutality in dealing with dissent. He also skillfully balances competing forces within the country, playing upon ethnic and religious rivalries and coopting groups through political and financial inducements. He has concentrated decision making within a tight circle of family, other close relatives, members of his al-Bu Nasir tribe, and those from his hometown, Tikrit. Beyond this ruling group, he relies upon patronage, tribal allegiance, ethnic affiliation, and economic leverage. The core of this system is a pervasive security apparatus, with the primary units supervised by his youngest son, Qusai. At the same time, all state structures have been corrupted and transformed into instruments of support for one-man rule. The sanctions regime and UN "Oil-for-Food" program, which has allowed Hussein to decide which domestic and international firms get contracts, has increased his control of the economy and enabled him to reward loyalty.

The United States faces an unprecedented security challenge. It arises from a global terrorism whose adherents are willing to sacrifice their lives and to use weapons of mass destruction. . . . Concurrently, the Bush administration has sounded an alarm concerning the threat posed by an old enemy, President Saddam Hussein of Iraq.

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In Iraq, Saddam Hussein exercises power through a sophisticated security structure, a vast network of informers, and extreme brutality in dealing with dissent.

To ensure his rule, Hussein established an interlocking network of military and civilian security organizations with different official missions, but with overlapping and redundant functions. . . . The result was a pervasive and encompassing system that converted Iraq into a police state.

Officially sanctioned smuggling and sanctions evasion have provided lucrative sources of income to regime insiders, the Baath Party elite, and corrupt businessmen. Iraq's once substantial middle class has been reduced to poverty by the sanctions, while a class of nouveaux riches has emerged to flout their fortunes made on the black market.

Security Organizations

To ensure his rule, Hussein established an interlocking network of military and civilian security organizations with different official missions, but with overlapping and redundant functions concerned with intelligence gathering and internal security. These security services are responsible to Hussein through the National Security Council, which he chairs. Their redundant responsibilities and vaguely defined relationships ensured that plots against the regime were likely to be detected and that the various agencies would compete with each other. The result was a pervasive and encompassing system that converted Iraq into a police state. The following civilian security services are dedicated to protecting the regime.

- **Special Security Directorate (SSD; in Arabic, al-Amm al-Khas)**. Under the leadership of Qusai Saddam Hussein, Saddam's youngest son, the SSD became Iraq's most important internal security agency. Its 5,000 members belong to Saddam Hussein's Tikrit clan and are hand picked for their loyalty from other parts of the security apparatus. The SSD's responsibilities include protecting the president and his immediate family and securing the presidential palaces. It also supplies security details for other senior officials that both provide protection and report on their activities. The SSD is charged with the regime's most sensitive security tasks such as concealing the weapons of mass destruction (WMD) program, evading the embargo on sensitive technologies, and supervising the military forces that are responsible for protecting the president. These include the Presidential Guard, the Palace Guard, the Special Republican Guard, and the Republican Guard, all of which report to the head of the SSD.
- **General Intelligence Directorate (Jihaz al Mukhabbarat)**. Between 1973 and the first Gulf War, the Mukhabbarat was headed by Saddam Hussein's brother and its powers increased significantly. After the war, it lost influence and personnel with the rise of the Special Security Directorate headed by Saddam Hussein's son. The Mukhabbarat's purview is all-inclusive, but its primary missions are foreign espionage and intelligence collection, supervision of Iraqi embassy personnel, covert action, assassination, and terrorist operations. Domestically, its responsibilities include suppression of Kurdish and Shiite opposition, monitoring foreign embassies, and surveillance of all other intelligence and security agencies, government ministries, the Baath Party, and the Iraqi military.
- **General Security Directorate (GSD; al-Amm al-'Amm)**. The GSD is the oldest and largest of the security services. Its primary concern is internal security and its operatives are located in every jurisdiction and keep abreast of everything that transpires within their area. GSD personnel are responsible for detecting dissent among the general public and monitoring the daily lives of Iraqi citizens, especially prominent personalities. A good part of the GSD's mission is intimidating the population. Its heavy-handed tactics are responsible for most of the official harassment suffered by Iraqi citizens.
- **Baath Party Security Agency (BPS; al-Amm al-Hizb)**. The ruling Baath Party has an internal security apparatus that oversees the activities of Iraqis through party security branches in organizations such as universities, factories, and trade unions. The BPS is responsible for security in all party offices and for monitoring the activities of party members.
- **The Iraqi National Police (INP; Shurta)**. Below the security agencies, which are concerned with threats to the regime, are the Iraqi National Police and border guards that

are responsible for law enforcement. Under the monarchy, the Iraqi National Police grew to 23,400 personnel by the time of the revolution in 1958. Established with the assistance of British advisers, the National Police were under the jurisdiction of the Ministry of the Interior and performed routine police functions. The INP included representatives from all ethnic groups and religious denominations. In the 1960s, police academies were established to improve training. The INP had positive relations with the public and enjoyed a reputation for professionalism, political neutrality, and honesty.

After 1968, the Baath Party enacted legislation that led to the militarization of the INP and its association with the army. Over time, as Hussein consolidated power, the INP became increasingly marginalized and their responsibilities for internal security and protecting the regime were taken over by the various security organizations. The police remained responsible for law enforcement, but the pervasiveness of the regime's security apparatus and its brutal methods meant that crimes were more likely to be committed by regime operatives than criminals. In many cases, the INP was prevented from investigating criminal activity under orders from the security services.

After the first Gulf War, the impact of the sanctions regime, the collapse of the economy, and the general decline in living standards impacted the INP more than the security services, which benefited from favored treatment by the government. INP officers that previously enjoyed a reputation for integrity came increasingly to engage in petty corruption to feed their families. This behavior seemed more a function of necessity than of any ideological commitment to Hussein or collapse of internal discipline.

Judiciary

During the Mandate period, the British established and staffed Iraq's modern, post-Ottoman judicial system. As a consequence, the judiciary had a tradition of independence from the executive that continued after the Iraqi revolution of 1958. During the period before the Baath Party came to power, the courts made a number of important decisions against the government. After 1968, the new Baathist constitution marginalized the judiciary by ending the separation of powers, making civilian courts subservient to the military court system, and creating special courts outside the regular judicial system. Iraq's civilian court system is composed of a high court, civil courts, and criminal courts and the criminal prosecutorial system. Judges are appointed by the Justice Council, which is chaired by the Minister of Justice. The civil court system has the following components:

- **Court of Cassation (Mahkamat al-Tamyeez).** Iraq's highest court, the Court of Cassation has jurisdiction over the civil and criminal court systems. It is headed by a president and has 25–40 members. Its functions are divided into several sections: civil, criminal, trade, tax, administration, and religion. The Court of Cassation hears appeals from the lower civil and criminal courts.
- **Civil Courts (Mahkamat al-Bidaya).** The Civil Court of First Instance addresses disputes between individuals or corporations and disputes with the government's administrative bodies. Appeals for administrative disputes are sent directly to the Court of Cassation. Appeals of cases between individuals or corporations go first to one of 18 regional Courts of Appeal before reaching the Court of Cassation.
- **Criminal Courts (Mahkamat al-Junah and Mahkamat al-Jinayat).** Iraq's Criminal Court of First Instance hears cases involving misdemeanors and certain minor felonies (penalties of five years or less). The Higher Criminal Court hears more serious felony cases and appeals from the Court of First Instance.
- **Prosecutorial System.** The prosecutorial system has three components: the judicial investigator, the investigative judge, and the prosecutor. Following the commission of a crime, a judicial investigator questions witnesses and surveys the crime scene with the assistance of the police. Based upon the judicial investigator's report, an investigative judge decides whether to prosecute, issues arrest warrants, and determines

whether suspects should be remanded to custody. The prosecutor, acting on behalf of the government, tries the cases. The prosecutor has the power to argue against the conclusion reached by the investigative judge, if he or she thinks the investigation was mishandled or the accused is innocent.

- **Religious Courts.** Although Iraq is a secular state, Moslem religious courts play an important role in adjudicating disputes over family matters such as inheritance, marriage, divorce, and alimony. These courts apply Sharia law, but decisions can be appealed to the Court of Cassation. For non-Moslems, cases involving family matters are handled by the Civil Court of First Instance, which may seek the advice of the relevant religious authorities in reaching a verdict.
- **Military Courts (al-mahkama al-Khasa and al-mahkama al-da'imiyah).** Soldiers cannot be tried for crimes by civilian courts without permission of the Ministry of Defense, which is seldom given. Instead, they are tried by military courts, which are under the jurisdiction of the Ministry of Defense and staffed by military legal officers. The structure of the military court system parallels the civilian courts. Special Military Courts deal with misdemeanors and minor felonies. More serious offenses are brought to the Permanent Military Court. Decisions from both courts can be appealed to the Military Court of Cassation.
- **Law Enforcement Courts (Mahakem Qi'wa al-Amn al-Dakhili).** The Baath Party established these courts in 1968 to handle cases involving members of the security services and the police force. Their structure and procedures are similar to those of the civil and military courts, with the right to appeal to the Law Enforcement Court of Cassation. There are also Joint Military and Law Enforcement Courts for cases involving both military and law enforcement officers. In practice, the Law Enforcement and Military Courts have protected their constituents.
- **Revolutionary Courts and Special Courts.** These courts were established after 1968 to deal with matters related to the security of the state and official corruption. Their powers supersede other courts and they are independent of the regular judicial system. These courts normally are staffed by Baath Party members without legal training. The Revolutionary Courts have the power to ignore habeas corpus and their decisions are final and without appeal. In addition to the Revolutionary Courts, there are other special ad hoc courts that are staffed by party and regime officials and established to hear special cases concerned with threats against the regime and other security-related matters.

While the civilian courts hear cases and render verdicts, they are powerless to resist political direction from the government and interference from the security services. They also have suffered from the corruption that has infected the rest of Iraq's institutions following the first Gulf War. Like the civil police, the regular judiciary has been marginalized by the use of special courts created by the regime for political purposes. The exclusion of military and law enforcement personnel from the jurisdiction of the regular courts and the use of extra-judicial courts to hear security cases has severely limited the role of the regular judicial system. At the same time, the impact of economic sanctions and social dislocation has resulted in the spread of corruption among the judiciary, which previously enjoyed a reputation for integrity.

Iraqi Law

The 1958 revolution, which overthrew the monarchy, abrogated Iraq's 1925 constitution. Since then, the country has had five interim constitutions. A sixth constitution was put forward by the Baath Party in 1990, but was never ratified in the aftermath of the Gulf War. The last interim constitution, which in principle remains in effect, was promulgated in 1970. This constitution gives ultimate authority to the Baath Party. In fact, Hussein has ruled by fiat. Since 1991, the Revolutionary Command Council, which he chairs,

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has issued some 1,500 resolutions annually, ranging from amendments to the constitution and security decrees to changes in laws concerning trade and taxes. This has created a legal jumble that will have to be addressed in the immediate post-conflict period.

JUSTICE AND THE RULE OF LAW

Dealing with Those Implicated in Past Abuses

Establishing the rule of law will require a two-track process, involving: (1) administering justice for past atrocities and ridding the Iraqi government of those implicated in the abuses of the regime, and (2) rebuilding the justice system to establish law and order and protect the rights of all Iraqis. It will first be necessary to dismantle and disband the interlocking network of internal security services that have been used to control the country, while internment, re-assigning, or otherwise monitoring their personnel to ensure they do not become "spoilers" to the transition. The Revolutionary and Special Courts should also be promptly abolished.

In several previous post-conflict scenarios, demands for justice have been met through the creation of international and local war crimes tribunals that have considered the cases of major offenders. There appears to be no question that Saddam Hussein, senior members of the Baath Party, top officials of the security services, and senior military commanders must be brought before a special war crimes tribunal. This could be: (1) an ad hoc international body, modeled on the International War Crimes Tribunals for the former Yugoslavia and Rwanda; (2) a hybrid special court comprised jointly of Iraqi and international jurists, like the special court now functioning in Sierra Leone or the one under negotiation for Cambodia; or (3) a wholly Iraqi tribunal, with international technical assistance. This court would deal with crimes covered under international law. During Hussein's rule, Iraq has been guilty of military aggression against its neighbors. It has also used poison gas and biological weapons despite being a signatory to the 1949 Geneva Convention and other international treaties dealing with human rights and armed conflict. There is also a case to be made that the Iraqi leadership is guilty of crimes under the Convention on Genocide for its repeated attacks on its Kurdish citizens, Shiites, and the Marsh Arabs.

At the same time, there will be a need for a reformed Iraqi court system to establish a forum for hearing cases against lesser figures and those that are guilty of domestic crimes such as the murder of prisoners, the illegal expropriation of property, and corruption. In establishing such a mechanism and determining who will be brought before it, the military administration must be aware that modern Iraqi history is replete with show trials where officials were accused of political crimes. It must also be remembered that international tribunals do not have the death penalty, which is permitted under the Geneva Convention and provided for in Iraqi law. For a variety of reasons—including an anomaly in which those found guilty of lesser crimes by the lower courts receive harsher sentences than those meted out to the top criminals by the special tribunal—it will be advisable to suspend application of the death penalty during the transition period.

There will also be the problem of determining how many of those who have committed crimes will be held accountable. During its rule, the all-pervasive reach of the Baath Party and security organs has involved vast numbers of Iraqis in the apparatus of abuse. As a consequence, the number of individuals implicated in the crimes of the regime may run into the tens or even hundreds of thousands. The decisions on who will be held accountable will have to be made in a fully transparent manner, conscious of the very significant practical limitations of the nascent justice system. Such decisions must also be made with the awareness that the entire process will fail if it appears such trials are a means of taking revenge or of assigning collective guilt or if the ultimate result is not reconciliation and the promotion of national unity.

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Beyond these two tiers of criminal trials, which can only handle the tip of the iceberg, a process of "de-Baathification," or the post-war vetting of officials, will need to screen the larger numbers of those who may be implicated in past abuses. On the basis of this vetting process, determinations would be made by occupation authorities and credible Iraqis to remove war criminals, human rights abusers, senior party and regime officials, members of the security services, and common criminals from positions of authority. The Baath Party has a total affiliation of 1 to 1.5 million, but only 50,000 are "full members." Most government officials, military officers, and senior administrators are party members for convenience rather than because of ideological commitment. Party membership is required to hold office, for promotions, to obtain economic advantages, and to avoid harassment. It is likely that only full party members will be removed from their positions as a result of vetting.

The vetting process would involve the use of international data banks, including those of coalition intelligence as well as human rights organizations; a review of local records, in particular those of the party and the security agencies; publication of names to encourage public submission of relevant information; and personal interviews. This process should also involve probationary appointments to ensure that officials could be subsequently removed for unacceptable performance. While vetting would take place across the government, it will likely be particularly important—and particularly extensive—in those sectors most crucial to the reform of Iraqi society. First among these will be the military, police, and judiciary; other areas for scrutiny may include the media and educational sectors, while large numbers of technocrats in the economic or energy sectors might continue their work without posing any threat to the transition.

Since the Iraqis have suffered from exploitation and oppression on such a large scale for over 30 years, limited criminal trials, even combined with the purge of tainted personnel, will likely not adequately address the legacy of past abuse. Other societies have employed a variety of approaches in recent years, including "truth and reconciliation commissions" and traditional mechanisms such as religious purification ceremonies for dealing with perpetrators. Iraqis will require a process for achieving justice and reconciliation that is in keeping with their unique history, culture, and political needs.

In this regard, it may be advisable to create a truth and reconciliation process to enable those who are guilty of lesser offenses to confess to their actions and thereby avoid prosecution—an option recently proposed by a team of Iraqi exiles studying the question. Under one scenario, modeled on the commission currently in place in East Timor, this process might also entail some form of community service by perpetrators to make amends for their actions. As in other post-conflict societies, this would also provide an opportunity for those who were victims of abuse and witnesses to atrocities to tell their stories and have their experiences recorded as part of the formal record. It would also provide a forum for all Iraqis to explore what kinds of structural and institutional reforms should be implemented to prevent any recurrence of such abuses in the future. Finally, to ensure that the effort contributes to national reconciliation, it will be important that a truth and reconciliation process avoid any implication of collective guilt.

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Rebuilding the Justice System

Beyond dealing with past abuses, a successful and stable transition in Iraq will demand a quick and intensive effort to reform the country's system of justice. The 1925 constitution was adopted by a constituent assembly after a limited process of popular consultation; some have suggested that it might serve as a basis for legal reform. It would have to be amended, however, to take into account the significant development in international human rights law in the past 75 years, including the major UN declarations on human rights and fundamental freedoms. In any event, it will be advisable for the Iraqi people to engage in a broad-based and deliberative process to craft a new constitution for the country.

There will be the need to update Iraq's criminal and commercial codes to ensure they correspond to the needs of a modern, democratic society and market economy. With the support of the U.S. State Department, a group of Iraqi exile jurists have already drafted over 600 pages of analysis and proposals for revisions to the codes, as well as proposals for trials of the leadership and reform of the courts, police, and prison system. The occupation regime will also have to consider whether local law will apply in cases involving coalition civilians, including commercial contractors, and whether such cases will be tried by local judges in Iraqi courts. Such cases may have high public profiles and will strongly influence the attitudes of the Iraqi people toward the presence of foreigners in their country.

Following the vetting process described above, the coalition will need to rehabilitate, retrain, and reform the Iraqi National Police, the judiciary, and corrections personnel so they can assume responsibility for local law enforcement, particularly in rural areas. Given Iraq's size, the coalition will need to rely upon existing Iraqi personnel. These officials would require the support of coalition security forces, as well as international supervision, technical assistance, and retraining to make the difficult transition to ensuring the rule of law in Iraq's new democratic society. Although creating a changed legal culture is a lengthy process, early attention to, and investment of adequate resources in, the rebuilding of all components of the local system of justice will be crucial to a successful transition, and will have a direct impact on the timetable for attainment of stability and the exit of coalition forces.

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Post-War Planning

On February 11, 2003, the Bush administration made its first formal statements concerning its plans for post-war Iraq. In testimony before the Senate Foreign Relations Committee, Marc Grossman, under secretary of state for political affairs, and his Defense Department counterpart, Douglas Feith, provided a general outline of the administration's thinking. Grossman said President Bush had not made a final decision about how the United States would proceed, but he had provided clear guidance that the United States should be prepared to meet the humanitarian, reconstruction, and administrative challenges that would follow the "liberation" of Iraq. According to Grossman, the administration was planning on a three-stage transition to a future democratic Iraq. The stages would include:

- Stabilization, where an interim coalition military administration would ensure security, stability, and public order for a period of up to two years;
- Transition, where authority progressively would be passed to Iraqi institutions; and,
- Transformation, where a democratically elected Iraqi government would govern Iraq on the basis of a new constitution drafted by representatives of the Iraqi people.

To ensure the United States could meet its responsibilities, Feith said, the president had signed a National Security Presidential Directive in January, creating the Office of Reconstruction and Humanitarian Assistance at the Pentagon. The office is responsible for detailed pre-planning and for nation building in Iraq. The office is headed by Lieutenant General Jay Garner (U.S. Army, ret.), who in 1991 played a leading role in Operation Provide Comfort, the post-Gulf War response to the humanitarian crisis created by Hussein's attacks on the Kurds. The office is staffed by personnel on detail from State, Treasury, Energy, the Agency for International Development, and Agriculture and also includes experts on police training and judicial reform from the Justice Department. It is responsible for three operations, each under a civilian coordinator: emergency relief, reconstruction, and humanitarian assistance. A fourth coordinator is responsible for communications, logistics, and the budget. (The office, with some 200 personnel, deployed to the region in mid-March in preparation for military operations.) Feith said the United States would try to share the post-war burden and would encourage participation by coalition partners, the United

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Nations, non-governmental organizations, and others. The U.S. goal is to transfer authority to the Iraqis as soon as possible. Feith added that the United States would not, however, "foist burdens on those who were not prepared to carry them."

Although Grossman's statement provided some initial insight into the administration's intentions, the general nature of his comments sent a message that planning for post-Hussein Iraq was still very much "a work in progress." This produced criticism from Congress and the press that the administration was unprepared to deal with a post-conflict situation in Iraq that was likely to be chaotic and dangerous. On February 20, administration officials briefed reporters on a "finalized blueprint" for dealing with post-war Iraq. Under this plan, the commander of U.S. Central Command, U.S. Army general Tommy Franks, would head a U.S. military administration that would remove the Hussein regime, dismantle its terrorist infrastructure, and run the country until Iraq's WMD were located and neutralized. In the immediate aftermath of the fighting, U.S. military teams would deliver emergency humanitarian aid under a program directed by Garner. This effort would demonstrate to Iraqis that they were better off under U.S. military rule than under Saddam. In addition, the military regime would patrol Iraq's borders and ensure the country remained a unitary state that was free of interference from its neighbors, particularly Iran.

When conditions stabilize, Franks would hand over to an American civilian administrator (a former state governor or ambassador, for example) who would direct reconstruction. Administration officials indicated they had developed several contingency plans for the second and third phases of the transition process, but wanted to wait until they could assess conditions on the ground. Among the possibilities was a plan for turning authority over to an interim UN administration that would oversee the transition to an Iraqi government. In any case, responsibility for food and humanitarian aid would be handed off to the UN World Food Program, which would utilize the distribution network that had been created by the Oil for Food Program. For its part, the UN Department of Peacekeeping Operations is already engaged in contingency planning for creating an Afghanistan-style, UN political office that would be able to help administer Iraq and deliver humanitarian assistance. In January, the United Nations issued an appeal for international donors to provide \$37 million to finance initial preparedness for post-war Iraq.

As for the Iraqi exile community, the State Department has worked with Iraqi exile organizations through the Future of Iraq Project. This involved creating 17 working groups on topics ranging from transitional justice and democratic principles to education and energy. Administration officials said expatriate Iraqis would provide advice through a 25-member "consultative council" that would be appointed by the United States. Iraqi expatriates would also be asked to participate in a commission to advise on the judicial system and the drafting of a new constitution. The United States made clear, however, that it opposed any attempt by Iraqi exile groups to form a provisional government. U.S. officials said Ahmed Chalabi, head of the Iraqi National Congress (INC) and the primary proponent of such a plan, was told that any such attempt would result in an immediate break in U.S.-INC relations. The U.S. goal was the creation of a democratic, unified, multi-ethnic Iraq that was at peace with its neighbors and devoid of weapons of mass destruction and ties to terrorism.

Meanwhile, the U.S. Defense Department began providing civil-military operations training to a force of up to 1,000 Iraqi exiles at a military base in Taszar, Hungary. The Pentagon's intention is to create a force of Iraqis that can assist coalition forces with non-military duties in Iraq. During their one month of training, the Iraqis are not given military instruction, but are trained to serve as liaison officers, guides, and translators for coalition forces. The Iraqis receive training in first aid, self-defense, land mine identification, and how to use protective equipment in the event of an encounter with chemical or biological weapons. Major General David Barno, U.S. Army, the commander of the training program, said they might also serve as police in liberated areas.

Creating Post-Conflict Security

As in previous peace operations, public order and basic rule of law functions will have to be performed by coalition military forces in the initial phase of the post-conflict period. But regular soldiers are neither trained nor equipped to undertake such duties and they have other responsibilities. The U.S. military is particularly ill equipped to perform post-conflict duties as it lacks constabulary forces such as Italy's Carabinieri and France's Gendarmerie Nationale. These standing forces have characteristics of both military and police. They are equipped with armored vehicles and mounted weapons and can fight as light infantry, if required. They are trained to maintain public order and are specially equipped to deal with civil disturbances. They are also trained to conduct investigations, make arrests, direct traffic, and perform other police functions. These units are able to deploy rapidly, are highly mobile, and, in Bosnia, Kosovo, and East Timor, have proven extremely versatile in responding to unforeseen requirements. The U.S. military, on the other hand, has been forced to rely upon Special Forces to ensure public order in Haiti and Afghanistan. Immediately following the U.S.-led intervention, Special Forces teams were deployed in rural villages in Haiti where they performed police functions. In Afghanistan, Special Forces teams have been sent to defuse disputes between rival warlords and keep the peace in rural areas. Having the nation's elite combat soldiers perform police functions is not appropriate and misuses a scarce military resource.

U.S. Military Police (MP) might offer a short-term and partial solution. MPs are trained to perform both public order and law enforcement functions. They can also establish and run corrections facilities. MPs are taught interpersonal skills, how to establish trust, and how to use mediation and other conflict resolution techniques to resolve disputes. Like civil police, MPs are trained to use only the minimum amount of force necessary to control the situation. They are comfortable with making individual decisions and handling ambiguous situations. MPs are also trained to assist victims. This is important in stability operations, particularly in dealing with victims of sexual assault and people with medical problems. But directing MPs to take on peacekeeping duties as a primary mission would require a change in U.S. Army doctrine. It would also take them away from their traditional duties, which are policing military installations and directing traffic and handling prisoners on the battlefield.

In addition, the number of MPs on active duty is small and these "high demand, low density" units are among the busiest in the military. Most MP units are located in the Army Reserves and are composed of civilian police officers. Activating these units disrupts families and deprives communities of police protection at a time when terrorist threats are placing unprecedented demands on local law enforcement. The same is true of U.S. Army Civil Affairs units that are staffed with experts in civilian functions such as restoring electricity, water, and other public services and providing interim government administration, legal, and penal experts. These units, which largely are staffed by reservists, are already stretched thin by commitments in the Balkans and Afghanistan. In many cases, these are also the same people that fill civilian jobs that are vital for homeland security.

On the civilian side, the U.S. government is also poorly equipped to provide security forces for post-conflict environments. No single department has responsibility for stabilization and no one at the planning table can present a comprehensive view of what the United States can offer, or what it will cost. As noted above, the United States does not have civilian constabulary forces. It also lacks a national police force such as the Royal Canadian Mounted Police that could provide police for a post-war Iraq mission. Although the United States is among the largest contributors of civilian police to UN peacekeeping missions, with 550 police officers in Kosovo and East Timor, it is the only country that uses commercial contractors to staff its civilian police contingents. The U.S. Civilian Police Program is run by the State Department and administered through a commercial firm that hires mostly retired police officers from state and local agencies. These officers come from widely

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varied backgrounds with very different levels of experience and expertise, particularly with respect to the unique kinds of challenges they will face in a foreign post-conflict environment that will be dramatically different from their local experience. They also lack the cohesion and organizational discipline of a standing, or even a reserve, police force. It is an open question whether the current State Department program, which relies on indirect government supervision and commercial contractors, would prove adequate in Iraq.

The United States also lacks an organized cadre of judicial personnel and corrections officers. There is no agency or office in the federal government with the mandate to organize and train judicial teams of American prosecutors, judges, and corrections officers for service in Iraq. Such teams likely will be needed, however, at least in the short term. They will also be needed for supervising and reforming the Iraqi judicial and penal system as soon as the fighting stops. There are Americans with relevant experience, but they would have to be recruited by the State or Justice Department, trained, equipped, and maintained once deployed. This would take programs, organization, and funding that currently are not available. The Justice Department does have programs for training indigenous police and prosecutors, but not judges and corrections officers. These programs rely upon State Department policy guidance and ad hoc project funding. In past instances, funding for training local police and prosecutors has not been appropriated prior to the intervention or fully coordinated, resulting in delays in program implementation.

Unlike previous peace operations, this time it appears unlikely the United States can depend on its allies to provide the military police, civilian constabulary, civil police, judicial personnel, and corrections officers that will be required. Neither Britain nor Australia, our most likely coalition partners, has constabulary forces, and the United Kingdom does not have a national police force. It is also unlikely that constabulary and civil police forces will come from NATO, the European Union, or the Organization for Security and Cooperation in Europe, which have staffed missions in the Balkans. France and Germany are opposed to taking military action to remove Saddam Hussein. After September 11, NATO was quick to help defend the United States and NATO troops participated in the war in Afghanistan and manned the International Security Assistance Force. There is little indication, however, that NATO will react in a similar manner in Iraq. It seems the United States will have to primarily rely upon its own resources to ensure post-conflict stability in Iraq.

RECOMMENDATIONS

A U.S. Stability Force

The solution to the security gap, which the United States will face in post-conflict Iraq, is straightforward. First, the Gulf region is too vital for the United States to simply remove Hussein and leave the clean up to others. A large stability mission led by American forces will be needed, most likely requiring up to several hundred thousand military personnel. To be successful this cannot be a small or short-term commitment. It must be clear from the beginning the United States will remain until the goal of a stable, democratic, and economically viable Iraq is achieved. We should not repeat the mistake made in Bosnia where the United States set a series of artificial deadlines for withdrawal. This encouraged the spoilers—the extreme nationalists, corrupt politicians, and organized crime figures that opposed the peace process—to dig in and wait until the international community withdrew. The model for Iraq must be the long-term U.S. commitments in Germany, Japan, Taiwan, and South Korea, not the brief U.S. interventions in Somalia, Haiti, and Afghanistan.

Second, American military forces should be augmented by a civilian U.S. Stability Force that contains Special Police Constabulary Units (SPCUs): civil police (street cops); and judicial teams of prosecutors, defense attorneys, judges, and corrections officers.

Such a force would provide the military with an effective civilian security partner. It would also provide the capability required to restore public order, maintain stability, and, ultimately, enable a new Iraqi government to provide for its own security through the rule of law. Making internal stability an immediate priority and rapidly moving toward sustainable security are musts in post-conflict scenarios. Almost everything else can wait. Absent effective security, we will have a repeat of the experience in Afghanistan, where reconstruction has been delayed for over a year by the general lawlessness outside of Kabul.

Third, all elements of the civilian U.S. Stability Force must be present at the earliest possible stage of the intervention. Special Police Constabulary Units will be needed for civil disorder management, high-risk arrests, and to deal with armed organized crime groups and terrorists. In the Balkans, such forces proved to be highly versatile, relieving regular military forces of such routine duties as escorting refugees; protecting airports, buildings, and historical sites; providing crowd control at public events; and guarding officials and foreign visitors. Civil police will provide traffic control, area security, law enforcement, and liaison with and management of Iraqi law enforcement agencies. The judicial teams will begin work in secure areas to ensure that an appropriate criminal code is in place, that courts function, and that adequate detention facilities are provided. They will establish the "investigation to incarceration continuum" that is required to ensure effective law enforcement. They will also create the vital foundation for the rule of law from which the other aspects of political, economic, and social reconstruction can go forward. To ensure unity of command, civilian elements initially will operate under military control, but civilian command of civilian elements should be restored as quickly as possible.

The civilian U.S. Stability Force for Iraq would consist of the following elements:

- **Special Police Constabulary Units.** Drawing on the experience of Kosovo and other recent operations, Special Police Constabulary Units should be established to respond rapidly to major challenges to public order. In Kosovo, the United Nations deployed highly mobile, company-size constabulary units that operated independently or in combination with other forces. These civilian UN Special Police Units (SPU) typically each had 115 personnel divided into three operational platoons, plus a headquarters staff and specialized elements for vehicle maintenance, medical care, and administration. Normally, these forces operated at the platoon level (30 personnel, 6 vehicles), although they could break down to the level of a team (10 officers, 2 vehicles) to conduct patrols, staff check points, provide close protection for international and local officials, and escort refugees. They could quickly coalesce into a company-size force (90 personnel) for crowd control. Individual SPUs could operate jointly with other constabulary units supported by military police or regular military forces. The 10 SPUs in Kosovo totaled 1,300 personnel. In addition to these civilian constabulary units, KFOR, the NATO military force in Kosovo, had a Multinational Specialized Unit (MSU) composed of 350 Italian carabinieri and French gendarmes. This unit operated under the military rules of engagement, which authorized its use for crowd control, but not law enforcement.

For Iraq, the U.S. Stability Force should include SPCUs with a total of 2,000 personnel organized into 17 company-sized units. These units should be stationed in the capital and four regional centers. This pattern of deployment would enable them to respond to emergencies throughout the country. The primary deployment would be in Baghdad (1,000) with additional personnel in Mosul (200) and Kirkuk (300) in the North and Basra (300) and Kut (200) in the South. In addition to ground transport, these forces should have access to airlift that would permit their rapid deployment. To be successful, these units will need the visible support of U.S. Military Police and regular army units in dealing with large-scale civil disturbances.

Organizing SPCUs for the Stability Force will require drawing together the necessary resources. It will also require new funding and new legislative authority. Cur-

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Creating a U.S. civil police force for Iraq will require new funding and new legislative authority. It will require moving the U.S. Civilian Police Program from the State Department to an existing U.S. law enforcement agency.

Constabulary and police are important, but they cannot function effectively without the other two parts of the "justice triad"—courts and prisons.

rently, there is no funding or agency in the federal government responsible for such a program. Fortunately, the equipment and personnel with the required skill sets are available from SWAT teams and special operations units of U.S. civilian law enforcement agencies. This personnel pool includes retirees within two years of active service that could augment the pool of younger officers. The component parts need to be organized into formed, trained, and equipped units. This should be done by a federal law enforcement agency.

- **Civil Police.** As for civil police (street cops), the U.S. Stability Force civil police component should include 4,000 members total. At least 1,000 members of this force would be stationed in Baghdad with the remainder assigned to the regional and provincial headquarters of the Iraqi police and to local stations. The force would include a mobile training unit of 100 personnel that would give courses and train local police trainers. Like the UN Police in Haiti, Kosovo, and East Timor, these officers should be armed and have "executive authority" to make arrests, conduct investigations, and use deadly force. This would enable them to engage in police operations and to operate independently if required.

In Haiti, Kosovo, and East Timor, UN Police operated with local police, but they could take over if local police were unable or unwilling to perform their duties. The fact that the international police were armed and had executive authority made them both more pro-active and more credible with their local counterparts. Once local police were properly trained and deployed, the international police rarely had to intervene beyond offering recommendations. U.S. civil police will also need vehicles, equipment, a headquarters, and the other trappings of a police organization. The duties of this force will include criminal investigation so it will need an independent forensics capability, which should be created as quickly as conditions permit.

Creating a U.S. civil police force for Iraq will require new funding and new legislative authority. It will require moving the U.S. Civilian Police Program from the State Department to an existing U.S. law enforcement agency. It will require creating a federalized corps of U.S. civilian police for deployment in foreign stability operations, rather than relying on commercial contractors. The United States now has several thousand police officers that have served in UN police missions. These veterans could form the core of a new federalized civil police force that would be recruited specifically for Iraq.

In Iraq, the U.S. civil police would play a major role in vetting the Iraqi National Police to ensure the removal of criminals and human rights offenders as was done by international civilian police in Bosnia and elsewhere. It is likely that all but the most senior leadership of the INP can remain in place and continue to provide routine law enforcement. The primary role of the U.S. civil police would be to provide organizational leadership, liaison, and guidance for their local counterparts. It will be important for most U.S. police officers to live in the area they are working in so they can monitor the activities of local police and provide real-time guidance. This practice was followed in Haiti, Kosovo, East Timor, and Bosnia. It will also be important for the civil police to work closely with the civilian constabulary units and U.S. military forces.

- **Judicial Teams.** Constabulary and police are important, but they cannot function effectively without the other two parts of the "justice triad"—courts and prisons. The U.S. Stability Force should include 10 teams of 20 individuals for a total 200 lawyers, judges, court administrators, and corrections officers. The judicial component of the Stability Force would also include a 10-person headquarters unit that would have a senior judge and prosecutor, a core group of 25 translators, and a 25-member training unit that would provide courses. A judicial team would be assigned to each of Iraq's eight major cities, with an additional team for Baghdad and one team to deal with emergencies. These teams would be mobile and could, like circuit riders, use their headquarters in the city for major trials but also tour the countryside to provide advice

and oversight. The teams would have authority to handle sensitive cases directly, as long as such actions were taken in a transparent and non-arbitrary manner.

While the judicial teams could dispense justice directly, their primary mission would be to provide liaison and monitor local courts that would continue to handle all but the most sensitive cases. The judicial teams would supervise the vetting and purging of local jurists and corrections officers. They would provide international legal assistance and training to local attorneys, jurists, and penal officers and insure that the courts function fairly and effectively. Judicial teams would also help ensure accountability for human rights violations, provide guidance on dealing with accused war criminals, and advise on and assist with the rehabilitation and reform of the justice system. In Bosnia and Kosovo, the United Nations discovered that local jurists were either too intimidated or biased to render proper verdicts in politically sensitive cases and those involving powerful gangsters, so international jurists were brought in to achieve fair trials.

International corrections officers would supervise the handling of important prisoners, ensure the release of political prisoners, and provide instruction on the humane treatment of prisoners and respect for human rights. They would also supervise reform of the corrections system. Corrections officers would cooperate with the military to create a maximum-security facility to house politically sensitive or extremely violent detainees and those accused of war crimes. In Bosnia and Kosovo, local corrections officers were either afraid or unwilling to jail high-profile offenders. In Kosovo, UN Special Police Units guarded prisons because the United Nations was unwilling to trust local guards with weapons.

Estimated Costs of the Civilian Component

- **Personnel.** Annual personnel cost for a total of 6,000 members of the U.S. constabulary and civil police force would total approximately \$600 million. This total would be based upon \$100,000 total compensation for each officer (grade 14, step 1 on the federal General Schedule, plus benefits), which is equal to the annual compensation received by participants in the U.S. State Department/Dyncorp Civilian Police (CIVPOL) Program. All participants in the U.S. CIVPOL Program receive the same salary and benefits. In addition, annual personnel costs for the 255 members of the judicial teams would total \$38 million based on an average of \$150,000 in total compensation for each member (GS 15/10, plus benefits). Total annual personnel costs would amount to \$628 million.
- **Vehicles and Equipment.** Most of the equipment for the initial deployment could be obtained through drawdowns from U.S. government and military inventories and through various types of lease arrangements with manufacturers. Equipment utilized by UN constabulary and police units is obtained through leasing. Using a combination of drawdowns and leases would limit start-up costs.

Creating a U.S. Stability Force would be challenging. Its contribution to post-conflict security in Iraq, however, would more than justify the effort and the relatively modest cost, especially in comparison to the cost of using the military. Such a force would:

- Join together all the elements required to achieve sustainable security under a single, unified authority;
- Close the security gap that has plagued previous peace operations by providing a smooth transition from war fighting to institution building;
- Establish police and judicial authority from the outset, freeing the military to perform its functions and speeding its withdrawal;
- Create the rule of law as a platform from which political reconciliation and economic reconstruction could go forward successfully; and,

***Given the operational realities
of post-war Iraq, the United
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bear the burden of establishing
the rule of law there.***

- Reduce the cost of the operation by substituting relatively inexpensive, light civilian forces for the type of heavy, regular military forces the United States was forced to rely upon in Bosnia and Kosovo.

Given the operational realities of post-war Iraq, the United States must be prepared to bear the burden of establishing the rule of law there. Other members of the coalition may play a role and additional countries may contribute as conditions stabilize. If experience in Haiti and other peace operations is a guide, countries will be more willing to contribute police, constabulary, and judicial experts if the United States participates and if Americans provide organizational leadership and manage rule of law functions. Eventually, the United States may be able to hand off this responsibility to UN, European, or regional law enforcement professionals, but initially, the overriding need for unity of command and internal coherence dictates that Americans should be in charge and carry the major responsibility. This will mean assuming additional burdens, but it will prevent mistakes and shorten the period before the United States can hand off responsibility to international or local authorities.

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Mr. SERWER. That paper outlines not only the requirements for constabulary forces but also for judicial and prosecutorial resources to be deployed to Iraq. I think it is fair to say that this bit of unsolicited advice has not been taken by the Administration, but I think quite a bit of work has been done on what requirements there are and about how much they might cost as well.

Mr. BEREUTER. Next, I want to ask the question about corruption. It seems most people agree that it is a corrosive, pervasive force in the Balkans. I think the deeper we look at it, the more we will find the misuse and theft of foreign aid from various countries, including our own, from public and nonpublic international organizations as well. How deep are the roots of this problem? Was it a problem in Tito's Yugoslavia? Was it a problem in Yugoslavia before the disintegration of Yugoslavia? Is there something that makes it more difficult to wipe out in this part of the continent than other places?

Mr. WHEELER. It is complicated because, of course, the historical legacy is one not simply of 50 years of communism and then 5 or 10 years of war and postwar trauma. In this part of the world, and what I mean by that is Central and Eastern Europe, the nature of the state and the nature of the definition of power and the rule of the politician has often created circumstances which have been conducive to certain levels of corruption. But it certainly is the case that we have the worst of both worlds now in the former Yugoslavia, and that is that you do have a long period of decline and decay of the old Communist system leading ultimately to war and the breakup of the state and the creation of alternative structures which have been used to substitute for the normal economy and the normal insurance policies of people.

So corruption has indeed become endemic. We have seen similar phenomenon, of course, in other East European countries, notably in Russia, where capitalism originally was defined almost in terms of Mafia style corruption. I have a feeling, however, that this—however natural and however dysfunctional this is, it is something that will gradually come to an end, not just because it is going to be assaulted ever more systematically with all sorts of local and international assistance but also because in a sense it is a phase, and I think we can look forward to that corrosion attenuating, although admittedly I am expressing here a tremendous amount of optimism, I suspect.

Mr. BEREUTER. Looking at the aspirants for the EU and the aspirant countries for NATO, a particular focus, of course, is on judicial reform and on dealing with corruption. Do you think that these membership tests have had an important role in reducing the problems in those countries, and that is to say, if you in fact began to see Croatia moving toward NATO membership that we would see an acceleration in dealing with this problem?

General NASH. My personal view, sir, is that some of this has been a "check the block" effort to reach standards. Many of the laws are put on the book, but there has not necessarily been wide-ranging implementation. So I am concerned about that as far as some of the membership process of both the EU and NATO is concerned.

If I could go back to your earlier question and just comment quickly. You may have included in your examples a case in Kosovo where a member of the international community siphoned funds, embezzled funds from his program to considerable personal gain, as part of the corruption issue that was taking place on the repair of some public facilities. I think that is not endemic to the system, per se. I happen to know the individual who is accused, and I did not blink when it was reported that there had been a problem in that area. But at the same time one of the recommendations of the Balkan task force is to streamline and stop the ad hoc arrangements with respect to international organizations. As a result of the mixing of responsibilities by different organizations, it is not that one organization or another organization cannot handle the various tasks, but when the lines of responsibility are not clear, it is very hard to chase the rabbit all the way to where a wrong has been done.

Mr. BEREUTER. I can believe that. And what is the solution for that problem because we have so many organizations, public and nonpublic, involved?

General NASH. In the Balkans, we recommend more and more responsibility toward the European Union. In my view, in postwar reconstruction efforts, a lead agency has to take that responsibility and there should be no doubt about who is in charge and who is responsible for the strategic planning within the context of that organization. The second recommendation would be an early decision to allow timely planning, resourcing, and organizing those organizations. For example, the international community structure in Kosovo was put together in the last week of a nearly 3-month bombing campaign that was supposed to last a week. Putting it together and going right to work, you inevitably cobble together an organizational structure. The Office of the High Representative in Bosnia is an even worse example of a cobbled structure.

Mr. BEREUTER. I have a related question coming from the *Balkans 2010* report, General Nash. In it it says transitional justice cannot simply be confined to a courtroom in the Netherlands. So how do we expect and how did the people working around that table under your supervision expect the people and societies of the Balkan countries to come to terms with the violence and injustice of the past if they are not able to deal with those problems through their own judicial systems in their own countries? In other words, at what point does the International Criminal Tribunal in the Hague transfer responsibilities to the judicial systems and institutions of the Balkans region?

General NASH. That is another area that is much easier to talk about than actually do. There are a couple of aspects of that. We felt that the ICTY, the Tribunal for the former Yugoslavia, had to complete its work in the next year or two, and, in parallel with the development of the justice system within the respective countries, begin to transfer responsibility for trials. At the same time, the transitional justice issue concerns a reconciliation process and a recognition by the community of a wide variety of issues. We were fortunate to have on the task force Alex Boraine, a South African who is an expert in this area, who guided us in a number of our recommendations. But the reconciliation process happens in par-

allel with the international community helping to develop the local justice systems.

Mr. BEREUTER. Dr. Wheeler?

Mr. WHEELER. Mr. Chairman, this is an interesting example of the predicaments we in the international community can get ourselves into. As the *Balkans 2010* report does rightly emphasize, it is vastly important to have effective transitional justice mechanisms in place. A tremendous amount of effort has been placed on this in Bosnia & Hercegovina. Not only has there been talk of a South African style truth and reconciliation commission but real active steps have been taken toward creating a Bosnian state court that would be able to handle the war crimes cases that will never get to the Hague. There are estimated between 5,000 and 7,000 of such cases. A state court has duly in fact been established early this year. But it turns out that it can't actually create a special panel to handle war crimes cases by Hague standards because, of course, the money has run out. So then there was on the one hand the international community demands that in the interest of the rule of law, and in this case transitional justice, the Bosnian state should do certain things or other Balkan states should do certain things, and the structures have been created which can't at the end be made functional because there is no money and the donors are not interested in providing it.

Mr. BEREUTER. And, Dr. Wheeler, if we were able to establish such a court, who would be the judges? How would they be selected? Would they have life tenure? Do we have enough trust in their capacity, their judicial demeanor and ethics that they should have life appointments? This is a problem in Southeast Europe and Bulgaria and Romania.

Mr. WHEELER. In Bosnia & Hercegovina in general a high judicial and prosecutorial council has been in operation since the autumn and it is proceeding with general reappointment of judges and prosecutors who will after a probationary period get life appointments.

Mr. BEREUTER. These are citizens of that country?

Mr. WHEELER. The judges and prosecutors being appointed are all local but the high judicial prosecutorial council is mixed, eminent local jurists with a foreign chair. In the case of the war crimes chamber of the state court, certainly the proposal there is that there should be a mixed bench of international judges and local judges.

Mr. BEREUTER. What is the best training capacity that we have in a multinational sense for judges from these countries emerging from communism and chaos?

Mr. WHEELER. The best training capacity is simply to enforce the highest possible standards and get rid of the duds.

Mr. BEREUTER. Is there an international organization that has taken this on, though, or many? For example, we have an academy for police operating out of Hungary. Do we have such an equivalent for judges anywhere?

Mr. WHEELER. I am not aware of one.

Mr. BEREUTER. Dr. Serwer?

Mr. SERWER. I think you do have programs for training judges and prosecutors run by ABA/CEELI and other NGOs. I think the

Council of Europe also has some of those. I only wanted to note that I believe that it has proved essential to have some international participation in the initial stages of prosecutions after some of these conflicts. I think it is quite clear in the case of Kosovo, for example, where we tried to do without it at first.

Mr. BEREUTER. In a judicial end or just the prosecutorial end?

Mr. SERWER. Both. We tried to do without it at first. We found that a Serb accused of violence against Albanians or an Albanian accused of violence against Serbs simply was not getting a fair trial in a court composed only of locals and with a local prosecutor. What we did was to overlay on that a system of international judges and prosecutors that works pretty well. We have one of those prosecutors working at the Institute now. It seems to us that this is a solution that will have to be used elsewhere.

But it is a case of bringing judges and prosecutors into Kosovo, not having them sit in the Hague. So it is quite different from some of what is done in other parts of the Balkans. I think there is a real need for international engagement, capacity building, training, but also active international participation in the judicial process in these postconflict situations. Certainly in Iraq we won't be able to entrust only to Iraqis the postconflict prosecutions.

Mr. BEREUTER. There has been functioning for some time a multilaterally funded international judicial training program also for various other positions within the judicial process, for Latin America, in San Jose, Costa Rica. I remember visiting it in the midst of the eighties when we were having great difficulties there. No equivalent like that in one location at this point in Europe, but you mentioned several places where they are potentially getting some assistance, maybe including the Council of Europe.

Mr. WHEELER. There are programs. Dr. Serwer remembers ABA/CEELI. The Greek government supports the European Public Law Center. These various bodies, whether they are publicly supported or NGOs, do and can provide judicial training. As part of the belated root and branch reform of the judiciary and prosecution services in Bosnia now, training academies are being set up with individual foreign participation. But I am not aware that these bodies have been entrusted to any one particular foreign center or provider to work on it.

Mr. BEREUTER. Two more questions, and I will just throw them before you so that you know you can plan your life and you will know that I am not going to keep you here forever. What do any of you think of the EU's performance in policing in Bosnia? And why are we not able to capture and bring to justice in the Hague some of the most notorious war criminals?

Mr. WHEELER. I will start with the EU if I might.

Mr. BEREUTER. Fine.

Mr. WHEELER. The politician's answer would be of course that it is too early to say. The EU PM has only taken over from the International Police Task Force, the EU Mission, on the 1st of January. Certainly early indications are good. Some of the doubts that have been expressed over whether or not the EU PM would take human trafficking seriously were very quickly resolved and the EU PM showed that it certainly was going to take human trafficking issues seriously. There has been some worry about whether or not the EU

PM would be sufficiently concerned about human rights in general because it didn't have a special human rights section.

Amnesty International certainly protested to Javier Solana about that. But I haven't seen any cases emerge where dereliction of duty in propagating human rights in the police forces has yet come to the fore. The big question over whether or not the EU PM is going to be able to do the job in maintaining the progress that the U.N. made with police reform is whether or not its slimmed-down, new-look version of what is called collocation; in other words, instead of having bobbies on the beat, policemen on the beat, they are going to have supposedly high level expert police in ministries of the interior at the highest and medium levels. Whether or not that is going to work and mentoring and monitoring at that level as opposed to leading by example on the ground is going to work again remains to be seen.

Mr. BEREUTER. It sounds doubtful.

Mr. WHEELER. It hasn't come a cropper yet.

Mr. SERWER. Mr. Chairman, I can try to address the question of capture of the war criminals. I presume you are talking mostly about in Bosnia.

Mr. BEREUTER. I am.

Mr. SERWER. About Karadzic and Mladic: I refuse to believe that it can't be done. I believe that it is a question of what priority you assign to it. The people who do this work for us are in high demand to do other things. For a long time in the U.S. Government, it was argued that if we took Karadzic and Mladic, it would be disruptive of the Dayton peace process. This is clearly no longer true. I am not sure if it was ever true. It has been recognized for years that it isn't true, that the Dayton peace process would go faster and better if they were captured. But it is not only a question of American priorities, because if I were one of these guys I wouldn't spend a lot of time in the U.S. sector in Bosnia. I might spend more time in the French sector or one of these other sectors. I guess the French sector is now in fact the Italian sector. So it is a matter of priorities but a matter of priorities not only for us but also for our allies.

I think it is a singular failing of the international community to have not captured them and sent them to the Hague at this point.

Mr. BEREUTER. General Nash?

General NASH. Sir, the second question first. We have not decided to do it. We have not made the decision to capture them. We have never given the order to our military forces to do it.

Mr. BEREUTER. That is literally true?

General NASH. We have not decided to do it. We may have said it is okay to do it.

Mr. BEREUTER. But not emphasized it? Not put the resources behind it?

General NASH. Right, and made the degree of commitment necessary. In the early days, of course, we almost had instructions to the contrary; that is, not to go to any extraordinary effort. That was a political decision that we were told.

Sir, I am not sufficiently up to date on the EU policing in the time they have been there. I would just caution, and I pick up on a phrase from Dr. Wheeler, I would be cautious to start comparing

the EU performance to a standard that was not met by the previous U.N. policing standard. We talked about mentoring with a cop on the beat, we should not assume that that was being done on a routine basis by the previous police training effort. And so I just caution about what standard we use in judging the EU's capacity vis-a-vis the previous model.

Mr. BEREUTER. Fair enough.

My staffer tells me that there is a story out today that Russia is pulling all of their troops out of KFOR. Do you have any comment about that? Any knowledge about that? Why they would do that?

Mr. WHEELER. That is not just today. SFOR announced last week that the Russians had said officially that they would say officially that they would withdraw both from KFOR and SFOR this year. But their forces are very small now.

Mr. SERWER. My only comment would be that it has been a good experience for the Americans and for NATO to work with the Russians on the ground. It is a cooperation that persisted during some difficult moments, but I wouldn't regard it as a disaster if they have other priorities at this point.

Mr. BEREUTER. I did hear repeatedly from people involved that it was a good experience, not always so easy at the beginning, but a good experience.

General NASH. Sir, I was not aware of this. I have been following other parts of the world of late. I am very shocked, frankly. It was the most phenomenal experience that I have ever had, the first time the Russian commander said to me, "Good morning, my commander." It is very unfortunate that they are no longer able to meet that obligation or meet that requirement.

Mr. BEREUTER. I hope it is not a geostrategic problem, but I suspect it could be.

Gentlemen, thank you very much for being very patient and very exceptionally fine witnesses. What you have contributed here today is valuable to us and we will go back into it in some greater detail.

Thank you very much for giving us your time. I appreciate it very much as the Committee does. The Subcommittee stands adjourned.

[Whereupon, at 3:55 p.m., the Subcommittee was adjourned.]

